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# Copyright

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World Intellectual Property Organization (WIPO)

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## Treaties

(Status on January 1, 1990)

### Convention Establishing the World Intellectual Property Organization

WIPO Convention (1967), amended in 1979

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B) <sup>1</sup>	
Algeria . . . . .	April 16, 1975 . . . . .	P	—
Angola (c) <sup>2</sup> . . . . .	April 15, 1985 . . . . .	—	—
Argentina . . . . .	October 8, 1980 . . . . .	P	B
Australia . . . . .	August 10, 1972 . . . . .	P	B
Austria . . . . .	August 11, 1973 . . . . .	P	B
Bahamas . . . . .	January 4, 1977 . . . . .	P	B
Bangladesh (c) <sup>2</sup> . . . . .	May 11, 1985 . . . . .	—	—
Barbados . . . . .	October 5, 1979 . . . . .	P	B
Belgium . . . . .	January 31, 1975 . . . . .	P	B
Benin . . . . .	March 9, 1975 . . . . .	P	B
Brazil . . . . .	March 20, 1975 . . . . .	P	B
Bulgaria . . . . .	May 19, 1970 . . . . .	P	B
Burkina Faso . . . . .	August 23, 1975 . . . . .	P	B
Burundi . . . . .	March 30, 1977 . . . . .	P	—
Byelorussian SSR (c) <sup>2</sup> . . . . .	April 26, 1970 . . . . .	—	—
Cameroon . . . . .	November 3, 1973 . . . . .	P	B
Canada . . . . .	June 26, 1970 . . . . .	P	B
Central African Republic . . . . .	August 23, 1978 . . . . .	P	B
Chad . . . . .	September 26, 1970 . . . . .	P	B
Chile . . . . .	June 25, 1975 . . . . .	—	B
China . . . . .	June 3, 1980 . . . . .	P	—
Colombia . . . . .	May 4, 1980 . . . . .	—	B
Congo . . . . .	December 2, 1975 . . . . .	P	B
Costa Rica . . . . .	June 10, 1981 . . . . .	—	B
Côte d'Ivoire . . . . .	May 1, 1974 . . . . .	P	B
Cuba . . . . .	March 27, 1975 . . . . .	P	—
Cyprus . . . . .	October 26, 1984 . . . . .	P	B
Czechoslovakia . . . . .	December 22, 1970 . . . . .	P	B
Democratic People's Republic of Korea . . . . .	August 17, 1974 . . . . .	P	—
Democratic Yemen (c) <sup>2</sup> . . . . .	December 27, 1989 . . . . .	—	—
Denmark . . . . .	April 26, 1970 . . . . .	P	B
Ecuador (c) <sup>2</sup> . . . . .	May 22, 1988 . . . . .	—	—
Egypt . . . . .	April 21, 1975 . . . . .	P	B
El Salvador (c) <sup>2</sup> . . . . .	September 18, 1979 . . . . .	—	—
Fiji . . . . .	March 11, 1972 . . . . .	—	B
Finland . . . . .	September 8, 1970 . . . . .	P	B
France . . . . .	October 18, 1974 . . . . .	P	B
Gabon . . . . .	June 6, 1975 . . . . .	P	B
Gambia (c) <sup>2</sup> . . . . .	December 10, 1980 . . . . .	—	—
German Democratic Republic . . . . .	April 26, 1970 . . . . .	P	B

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B) <sup>1</sup>	
Germany, Federal Republic of	September 19, 1970	P	B
Ghana	June 12, 1976	P	-
Greece	March 4, 1976	P	B
Guatemala (c) <sup>2</sup>	April 30, 1983	-	-
Guinea	November 13, 1980	P	B
Guinea-Bissau	June 28, 1988	P	-
Haiti	November 2, 1983	P	-
Holy See	April 20, 1975	P	B
Honduras	November 15, 1983	-	B
Hungary	April 26, 1970	P	B
Iceland	September 13, 1986	P	B
India	May 1, 1975	-	B
Indonesia	December 18, 1979	P	-
Iraq	January 21, 1976	P	-
Ireland	April 26, 1970	P	B
Israel	April 26, 1970	P	B
Italy	April 20, 1977	P	B
Jamaica (c) <sup>2</sup>	December 25, 1978	-	-
Japan	April 20, 1975	P	B
Jordan	July 12, 1972	P	-
Kenya	October 5, 1971	P	-
Lebanon	December 30, 1986	P	-
Lesotho	November 18, 1986	P	B
Liberia	March 8, 1989	-	B
Libya	September 28, 1976	P	B
Liechtenstein	May 21, 1972	P	B
Luxembourg	March 19, 1975	P	B
Madagascar	December 22, 1989	P	B
Malawi	June 11, 1970	P	-
Malaysia	January 1, 1989	P	-
Mali	August 14, 1982	P	B
Malta	December 7, 1977	P	B
Mauritania	September 17, 1976	P	B
Mauritius	September 21, 1976	P	B
Mexico	June 14, 1975	P	B
Monaco	March 3, 1975	P	B
Mongolia	February 28, 1979	P	-
Morocco	July 27, 1971	P	B
Netherlands	January 9, 1975	P	B
New Zealand	June 20, 1984	P	-
Nicaragua (c) <sup>2</sup>	May 5, 1985	-	-
Niger	May 18, 1975	P	B
Norway	June 8, 1974	P	B
Pakistan	January 6, 1977	-	B
Panama (c) <sup>2</sup>	September 17, 1983	-	-
Paraguay (c) <sup>2</sup>	June 20, 1987	-	-
Peru	September 4, 1980	-	B
Philippines	July 14, 1980	P	B
Poland	March 23, 1975	P	-
Portugal	April 27, 1975	P	B

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B) <sup>1</sup>	
Qatar (b) <sup>2</sup>	September 3, 1976	—	—
Republic of Korea	March 1, 1979	P	—
Romania	April 26, 1970	P	B
Rwanda	February 3, 1984	P	B
Saudi Arabia (a) <sup>2</sup>	May 22, 1982	—	—
Senegal	April 26, 1970	P	B
Sierra Leone (c) <sup>2</sup>	May 18, 1986	—	—
Somalia (c) <sup>2</sup>	November 18, 1982	—	—
South Africa	March 23, 1975	P	B
Soviet Union	April 26, 1970	P	—
Spain	April 26, 1970	P	B
Sri Lanka	September 20, 1978	P	B
Sudan	February 15, 1974	P	—
Suriname	November 25, 1975	P	B
Swaziland (c) <sup>2</sup>	August 18, 1988	—	—
Sweden	April 26, 1970	P	B
Switzerland	April 26, 1970	P	B
Thailand	December 25, 1989	—	B
Togo	April 28, 1975	P	B
Trinidad and Tobago	August 16, 1988	P	B
Tunisia	November 28, 1975	P	B
Turkey	May 12, 1976	P	—
Uganda	October 18, 1973	P	—
Ukrainian SSR (c) <sup>2</sup>	April 26, 1970	—	—
United Arab Emirates (b) <sup>2</sup>	September 24, 1974	—	—
United Kingdom	April 26, 1970	P	B
United Republic of Tanzania	December 30, 1983	P	—
United States of America	August 25, 1970	P	B
Uruguay	December 21, 1979	P	B
Venezuela	November 23, 1984	—	B
Viet Nam	July 2, 1976	P	—
Yemen (c) <sup>2</sup>	March 29, 1979	—	—
Yugoslavia	October 11, 1973	P	B
Zaire	January 28, 1975	P	B
Zambia	May 14, 1977	P	—
Zimbabwe	December 29, 1981	P	B

(Total: 126 States)

<sup>1</sup> "P" means that the State is also a member of the International Union for the Protection of Industrial Property (Paris Union), founded by the Paris Convention for the Protection of Industrial Property, and has ratified or acceded to at least the administrative and final provisions (Articles 13 to 30) of the Stockholm Act (1967) of that Convention.

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

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

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

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

## Berne Convention for the Protection of Literary and Artistic Works

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

(Berne Union)

State	Contribution class*	Date on which State became party to the Convention	Latest Act <sup>1</sup> of the Convention to which State is party and date on which State became party to that Act
Argentina . . . . .	VI	June 10, 1967	<i>Brussels: June 10, 1967</i> Paris, Articles 22 to 38: October 8, 1980
Australia . . . . .	III	April 14, 1928	Paris: March 1, 1978
Austria . . . . .	VI	October 1, 1920	Paris: August 21, 1982
Bahamas . . . . .	VII	July 10, 1973	<i>Brussels: July 10, 1973</i> Paris, Articles 22 to 38: January 8, 1977 <sup>11</sup>
Barbados . . . . .	VII	July 30, 1983	Paris: July 30, 1983
Belgium . . . . .	III	December 5, 1887	<i>Brussels: August 1, 1951</i> <i>Stockholm, Articles 22 to 38: February 12, 1975</i>
Benin . . . . .	S	January 3, 1961 <sup>12</sup>	Paris: March 12, 1975
Brazil . . . . .	VI	February 9, 1922	Paris: April 20, 1975
Bulgaria . . . . .	VI	December 5, 1921	Paris: December 4, 1974 <sup>11</sup>
Burkina Faso . . . . .	S	August 19, 1963 <sup>14</sup>	Paris: January 24, 1976
Cameroon . . . . .	VI	September 21, 1964 <sup>12</sup>	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: November 10, 1973
Canada . . . . .	III	April 10, 1928	<i>Rome: August 1, 1931</i> <i>Stockholm, Articles 22 to 38: July 7, 1970</i>
Central African Republic	S	September 3, 1977	Paris: September 3, 1977
Chad . . . . .	S	November 25, 1971	<i>Brussels: November 25, 1971<sup>24</sup></i> <i>Stockholm, Articles 22 to 38: November 25, 1971</i>
Chile . . . . .	VII	June 5, 1970	Paris: July 10, 1975
Colombia . . . . .	VII	March 7, 1988	Paris: March 7, 1988
Congo . . . . .	VII	May 8, 1962 <sup>12</sup>	Paris: December 5, 1975
Costa Rica . . . . .	VII	June 10, 1978	Paris: June 10, 1978
Côte d'Ivoire . . . . .	VI	January 1, 1962	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: May 4, 1974
Cyprus . . . . .	VII	February 24, 1964 <sup>12</sup>	Paris: July 27, 1983 <sup>7</sup>
Czechoslovakia . . . . .	IV	February 22, 1921	Paris: April 11, 1980 <sup>11</sup>
Denmark . . . . .	IV	July 1, 1903	Paris: June 30, 1979
Egypt . . . . .	VII	June 7, 1977	Paris: June 7, 1977 <sup>11</sup>
Fiji . . . . .	VII	December 1, 1971 <sup>12</sup>	<i>Brussels: December 1, 1971</i> <i>Stockholm, Articles 22 to 38: March 15, 1972</i>
Finland . . . . .	IV	April 1, 1928	Paris: November 1, 1986
France . . . . .	I	December 5, 1887	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: December 15, 1972
Gabon . . . . .	VII	March 26, 1962	Paris: June 10, 1975
German Democratic Republic . . . . .	V	December 5, 1887 <sup>13</sup>	Paris: February 18, 1978 <sup>11</sup>

State	Contribution class*	Date on which State became party to the Convention	Latest Act <sup>1</sup> of the Convention to which State is party and date on which State became party to that Act
Germany, Federal Republic of . . . . .	I	December 5, 1887 <sup>13</sup>	Paris, Articles 1 to 21: October 10, 1974 <sup>5</sup> Paris, Articles 22 to 38: January 22, 1974
Greece . . . . .	VI	November 9, 1920	Paris: March 8, 1976
Guinea . . . . .	S	November 20, 1980	Paris: November 20, 1980
Holy See . . . . .	VII	September 12, 1935	Paris: April 24, 1975
Honduras . . . . .	VII	January 25, 1990	Paris: January 25, 1990
Hungary . . . . .	VI	February 14, 1922	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: December 15, 1972
Iceland . . . . .	VII	September 7, 1947	<i>Rome: September 7, 1947<sup>7</sup></i> Paris, Articles 22 to 38: December 28, 1984
India . . . . .	IV	April 1, 1928	Paris, Articles 1 to 21: May 6, 1984 <sup>6,9,10</sup> Paris, Articles 22 to 38: January 10, 1975 <sup>11</sup>
Ireland . . . . .	IV	October 5, 1927	Paris: January 2, 1990
Israel . . . . .	VI	<i>March 24, 1950</i>	<i>Brussels: August 1, 1951</i> <i>Stockholm, Articles 22 to 38: January 29 or February 26, 1970<sup>3</sup></i>
Italy . . . . .	III	December 5, 1887	Paris: November 14, 1979
Japan . . . . .	II	July 15, 1899	Paris: April 24, 1975 <sup>7</sup>
Lebanon . . . . .	VI	<i>September 30, 1947</i>	<i>Rome: September 30, 1947</i>
Lesotho . . . . .	S	September 28, 1989	Paris: September 28, 1989 <sup>6,11</sup>
Liberia . . . . .	VII	March 8, 1989	Paris: March 8, 1989 <sup>6,11</sup>
Libya . . . . .	VI	September 28, 1976	Paris: September 28, 1976 <sup>11</sup>
Liechtenstein . . . . .	VII	<i>July 30, 1931</i>	<i>Brussels: August 1, 1951</i> <i>Stockholm, Articles 22 to 38: May 25, 1972</i>
Luxembourg . . . . .	VII	June 20, 1888	Paris: April 20, 1975
Madagascar . . . . .	VI	<i>January 1, 1966</i>	<i>Brussels: January 1, 1966</i>
Mali . . . . .	S	March 19, 1962 <sup>12</sup>	Paris: December 5, 1977
Malta . . . . .	VII	September 21, 1964	<i>Rome: September 21, 1964</i> Paris, Articles 22 to 38: December 12, 1977 <sup>11</sup>
Mauritania . . . . .	S	February 6, 1973	Paris: September 21, 1976
Mauritius . . . . .	VII	May 10, 1989	Paris: May 10, 1989 <sup>6,11</sup>
Mexico . . . . .	IV	June 11, 1967	Paris: December 17, 1974 <sup>6</sup>
Monaco . . . . .	VII	May 30, 1889	Paris: November 23, 1974
Morocco . . . . .	VI	June 16, 1917	Paris: May 17, 1987
Netherlands . . . . .	III	November 1, 1912	Paris, Articles 1 to 21: January 30, 1986 <sup>15</sup> Paris, Articles 22 to 38: January 10, 1975 <sup>16</sup>
<i>New Zealand</i> . . . . .	V	<i>April 24, 1928</i>	<i>Rome: December 4, 1947</i>
Niger . . . . .	S	May 2, 1962 <sup>12</sup>	Paris: May 21, 1975
Norway . . . . .	IV	April 13, 1896	<i>Brussels: January 28, 1963<sup>5</sup></i> Paris, Articles 22 to 38: June 13, 1974
<i>Pakistan</i> . . . . .	VI	<i>July 5, 1948</i>	<i>Rome: July 5, 1948<sup>2</sup></i> <i>Stockholm, Articles 22 to 38: January 29 or February 26, 1970<sup>3</sup></i>
Peru . . . . .	VII	August 20, 1988	Paris: August 20, 1988
Philippines . . . . .	VI	August 1, 1951	<i>Brussels: August 1, 1951</i> Paris, Articles 22 to 38: July 16, 1980
<i>Poland</i> . . . . .	VI	<i>January 28, 1920</i>	<i>Rome: November 21, 1935</i>
Portugal . . . . .	V	March 29, 1911	Paris: January 12, 1979 <sup>17</sup>
<i>Romania</i> . . . . .	VI	<i>January 1, 1927</i>	<i>Rome: August 6, 1936<sup>2</sup></i> <i>Stockholm, Articles 22 to 38: January 29 or February 26, 1970<sup>3,11</sup></i>
Rwanda . . . . .	S	March 1, 1984	Paris: March 1, 1984
Senegal . . . . .	VI	August 25, 1962	Paris: August 12, 1975
South Africa . . . . .	IV	October 3, 1928	<i>Brussels: August 1, 1951</i> Paris, Articles 22 to 38: March 24, 1975 <sup>11</sup>

State	Contribution class*	Date on which State became party to the Convention	Latest Act <sup>1</sup> of the Convention to which State is party and date on which State became party to that Act
Spain . . . . .	II	December 5, 1887	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: February 19, 1974
Sri Lanka . . . . .	VII	July 20, 1959 <sup>12</sup>	<i>Rome: July 20, 1959</i> Paris, Articles 22 to 38: September 23, 1978
Suriname . . . . .	VII	February 23, 1977	Paris: February 23, 1977
Sweden . . . . .	III	August 1, 1904	Paris, Articles 1 to 21: October 10, 1974 Paris, Articles 22 to 38: September 20, 1973
Switzerland . . . . .	III	<i>December 5, 1887</i>	<i>Brussels: January 2, 1956</i> <i>Stockholm, Articles 22 to 38: May 4, 1970</i> <i>Berlin: July 17, 1931<sup>8</sup></i> Paris, Articles 22 to 38: December 29, 1980 <sup>11</sup>
Thailand . . . . .	VII	July 17, 1931	Paris: April 30, 1975
Togo . . . . .	S	April 30, 1975	Paris: August 16, 1988
Trinidad and Tobago . . .	VII	August 16, 1988	Paris: August 16, 1975 <sup>11</sup>
Tunisia . . . . .	VII	December 5, 1887	<i>Brussels: January 1, 1952<sup>7</sup></i> Paris: January 2, 1990
Turkey . . . . .	VI	<i>January 1, 1952</i>	Paris: March 1, 1989
United Kingdom . . . . .	I	December 5, 1887	Paris: December 28, 1979
United States of America	I	March 1, 1989	Paris: December 30, 1982 <sup>11</sup>
Uruguay . . . . .	VII	July 10, 1967	Paris: September 2, 1975 <sup>7</sup>
Venezuela . . . . .	VII	December 30, 1982	Paris: January 31, 1975
Yugoslavia . . . . .	VI	June 17, 1930	<i>Rome: April 18, 1980</i> Paris, Articles 22 to 38: December 30, 1981
Zaire . . . . .	VI	October 8, 1963 <sup>12</sup>	
Zimbabwe . . . . .	VII	April 18, 1980	

(Total: 84 States)

\* Contributions in classes I to VII correspond to 25, 20, 15, 10, 5, 3 and 1 units, respectively. In class S, they correspond to 1/8 of one unit.

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

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

<sup>3</sup> These are the alternative dates of entry into force which the Director General of WIPO communicated to the States concerned.

<sup>4</sup> In accordance with the provision of Article 29 of the Stockholm Act applicable to the States outside the Union which accede to the said Act, this State is bound by Articles 1 to 20 of the Brussels Act.

<sup>5</sup> This State has declared that it admits the application of the Appendix of the Paris Act to works of which it is the State of origin by States which have made a declaration under Article VI(1)(i) of the Appendix or a notification under Article I of the Appendix. The declarations took effect on October 18, 1973, for Germany (Federal Republic of), and on March 8, 1974, for Norway.

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

<sup>7</sup> Accession subject to the reservation concerning the right of translation (for Japan, until December 31, 1980).

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

<sup>9</sup> This State declared that its ratification shall not apply to the provisions of Article 14<sup>bis</sup>(2)(b) of the Paris Act (presumption of legitimation for some authors who have brought contributions to the making of the cinematographic work).

<sup>10</sup> This State notified the designation of the competent authority provided by Article 15(4) of the Paris Act.

<sup>11</sup> Accession or ratification with the declaration provided for in Article 33(2) relating to the International Court of Justice.

<sup>12</sup> Date on which the declaration of continued adherence was sent, after the accession of the State to independence.

<sup>13</sup> Date on which the accession by the German Empire became effective.

<sup>14</sup> Burkina Faso, which had acceded to the Berne Convention (Brussels Act) as from August 19, 1963, denounced the said Convention as from September 20, 1970. Later on, Burkina Faso acceded again to the Berne Convention (Paris Act); this accession took effect on January 24, 1976.

<sup>15</sup> Ratification for the Kingdom in Europe.

<sup>16</sup> Ratification for the Kingdom in Europe. Articles 22 to 38 of the Paris Act apply also to the Netherlands Antilles and Aruba.

<sup>17</sup> Pursuant to the provisions of Article 14<sup>bis</sup>(2)(c) of the Paris Act, this State has made a declaration to the effect that the undertaking by authors to bring contributions to the making of a cinematographic work must be in a written agreement. This declaration was received on November 5, 1986.



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

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

#### Rome Convention (1961)

State	Date on which State became party to the Convention	State	Date on which State became party to the Convention
Austria *	June 9, 1973	Guatemala	January 14, 1977
Barbados	September 18, 1983	Honduras	February 16, 1990
Brazil	September 29, 1965	Ireland *	September 19, 1979
Burkina Faso	January 14, 1988	Italy *	April 8, 1975
Chile	September 5, 1974	Japan *	October 26, 1989
Colombia	September 17, 1976	Lesotho *	January 26, 1990
Congo *	May 18, 1964	Luxembourg *	February 25, 1976
Costa Rica	September 9, 1971	Mexico	May 18, 1964
Czechoslovakia *	August 14, 1964	Monaco *	December 6, 1985
Denmark *	September 23, 1965	Niger *	May 18, 1964
Dominican Republic	January 27, 1987	Norway *	July 10, 1978
Ecuador	May 18, 1964	Panama	September 2, 1983
El Salvador	June 29, 1979	Paraguay	February 26, 1970
Fiji *	April 11, 1972	Peru	August 7, 1985
Finland *	October 21, 1983	Philippines	September 25, 1984
France *	July 3, 1987	Sweden *	May 18, 1964
Germany, Federal		United Kingdom *	May 18, 1964
Republic of *	October 21, 1966	Uruguay	July 4, 1977

(Total: 35 States)

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

\* The instruments of ratification or accession deposited with the Secretary-General of the United Nations by the following States contain declarations made under the articles mentioned hereafter (with reference to publication in *Le Droit d'auteur* (Copyright) for the years 1962 to 1964 and in *Copyright* since 1965):

*Austria*, Article 16(1)(a)(iii) and (iv) and 1(b) [1973, p. 67];

*Congo*, Articles 5(3) (concerning Article 5(1)(c)) and 16(1)(a)(i) [1964, p. 127];

*Czechoslovakia*, Article 16(1)(a)(iii) and (iv) [1964, p. 110];

*Denmark*, Articles 6(2), 16(1)(a)(ii) and (iv) and 17 [1965, p. 214];

*Fiji*, Articles 5(3) (concerning Article 5(1)(b)), 6(2) and 16(1)(a)(i) [1972, pp. 88 and 178];

*Finland*, Articles 6(2), 16(1)(a)(i), (ii) and (iv), 16(1)(b) and 17 [1983, p. 287];

*France*, Articles 5(3) and 16(1)(a)(iii) and (iv) [1987, p. 184];

*Germany (Federal Republic of)*, Articles 5(3) (concerning Article 5(1)(b)) and 16(1)(a)(iv) [1966, p. 237];

*Ireland*, Articles 5(3) (concerning Article 5(1)(b)), 6(2) and 16(1)(a)(ii) [1979, p. 218];

*Italy*, Articles 6(2), 16(1)(a)(ii), (iii) and (iv), 16(1)(b) and 17 [1975, p. 44];

*Japan*, Articles 5(3) and 16(1)(a)(ii) and (iv) [1989, p. 288];

*Lesotho*, Article 16(1)(a)(ii) and (i)(b);

*Luxembourg*, Articles 5(3) (concerning Article 5(1)(c)), 16(1)(a)(i) and 16(1)(b) [1976, p. 24];

*Monaco*, Articles 5(3) (concerning Article 5(1)(c)), 16(1)(a)(i) and 16(1)(b) [1985, p. 422];

*Niger*, Articles 5(3) (concerning Article 5(1)(c)) and 16(1)(a)(i) [1963, p. 155];

*Norway*, Articles 6(2) and 16(1)(a)(ii), (iii) and (iv) [1978, n. 133; in respect of 16(1)(a)(ii) modified: 1989, p. 288];

*Sweden*, Article 16(1)(b) [1962, p. 138; 1986, p. 382];

*United Kingdom*, Articles 5(3) (concerning Article 5(1)(b)), 6(2) and 16(1)(a)(ii), (iii) and (iv) [1963, p. 244]; the same declarations were made for Gibraltar and Bermuda [1967, p. 36; 1970, p. 108].

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

**Phonograms Convention (Geneva, 1971)**

State	Date on which State became party to the Convention	State	Date on which State became party to the Convention
Argentina . . . . .	June 30, 1973	Hungary . . . . .	May 28, 1975
Australia . . . . .	June 22, 1974	India . . . . .	February 12, 1975
Austria . . . . .	August 21, 1982	Israel . . . . .	May 1, 1978
Barbados . . . . .	July 29, 1983	Italy * . . . . .	March 24, 1977
Brazil . . . . .	November 28, 1975	Japan . . . . .	October 14, 1978
Burkina Faso . . . . .	January 30, 1988	Kenya . . . . .	April 21, 1976
Chile . . . . .	March 24, 1977	Luxembourg . . . . .	March 8, 1976
Costa Rica . . . . .	June 17, 1982	Mexico . . . . .	December 21, 1973
Czechoslovakia . . . . .	January 15, 1985	Monaco . . . . .	December 2, 1974
Denmark . . . . .	March 24, 1977	New Zealand . . . . .	August 13, 1976
Ecuador . . . . .	September 14, 1974	Norway . . . . .	August 1, 1978
Egypt . . . . .	April 23, 1978	Panama . . . . .	June 29, 1974
El Salvador . . . . .	February 9, 1979	Paraguay . . . . .	February 13, 1979
Fiji . . . . .	April 18, 1973	Peru . . . . .	August 24, 1985
Finland * . . . . .	April 18, 1973	Republic of Korea . . . . .	October 10, 1987
France . . . . .	April 18, 1973	Spain . . . . .	August 24, 1974
Germany, Federal Republic of . . . . .	May 18, 1974	Sweden . . . . .	April 18, 1973
Guatemala . . . . .	February 1, 1977	Trinidad and Tobago . . . . .	October 1, 1988
Holy See . . . . .	July 18, 1977	United Kingdom . . . . .	April 18, 1973
Honduras . . . . .	March 6, 1990	United States of America . . . . .	March 10, 1974
		Uruguay . . . . .	January 18, 1983
		Venezuela . . . . .	November 18, 1982
		Zaire . . . . .	November 29, 1977
(Total: 43 States)			

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

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

**Satellites Convention (Brussels, 1974)**

State	Date on which State became party to the Convention	State	Date on which State became party to the Convention
Austria . . . . .	August 6, 1982	Morocco . . . . .	June 30, 1983
Germany, Federal Republic of * . . . . .	August 25, 1979	Nicaragua . . . . .	August 25, 1979
Italy * . . . . .	July 7, 1981	Panama . . . . .	September 25, 1985
Kenya . . . . .	August 25, 1979	Peru . . . . .	August 7, 1985
Mexico . . . . .	August 25, 1979	Soviet Union . . . . .	January 20, 1989
		United States of America . . . . .	March 7, 1985
		Yugoslavia . . . . .	August 25, 1979
(Total: 12 States)			

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

**Nairobi Treaty  
on the Protection of the Olympic Symbol**

Nairobi Treaty (1981)

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

(Total: 32 States)

**Treaty on the International Registration  
of Audiovisual Works\***

(Geneva, April 20, 1989)

*Signatory States*

Austria, Brazil, Burkina Faso, Canada, Chile, Egypt, France, Greece, Guinea, Hungary, India, Mexico, Philippines, Poland, Senegal, United States of America, Yugoslavia (17).

**Treaty on Intellectual Property  
in Respect of Integrated Circuits\***

(Washington, May 26, 1989)

*Signatory States*

Egypt, Ghana, Guatemala, Liberia, Yugoslavia, Zambia (6).

\* This Treaty has not yet entered into force.

## Treaties in the Field of Copyright and Neighboring Rights Not Administered by WIPO<sup>1</sup>

### Universal Copyright Convention

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

State	Date on which State became party to the Convention		State	Date on which State became party to the Convention	
	Text of 1952	Text of 1971		Text of 1952	Text of 1971
Algeria <sup>2</sup> . . . . .	August 28, 1973	July 10, 1974	Monaco . . . . .	September 16, 1955	December 13, 1974
Andorra . . . . .	September 16, 1955	-	Morocco . . . . .	May 8, 1972	January 28, 1976
Argentina . . . . .	February 13, 1958	-	Netherlands . . . . .	June 22, 1967	November 30, 1985
Australia . . . . .	May 1, 1969	February 28, 1978	New Zealand . . . . .	September 11, 1964	-
Austria . . . . .	July 2, 1957	August 14, 1982	Nicaragua . . . . .	August 16, 1961	-
Bahamas . . . . .	December 27, 1976	December 27, 1976	Niger . . . . .	May 15, 1989	May 15, 1989
Bangladesh <sup>2</sup> . . . . .	August 5, 1975	August 5, 1975	Nigeria . . . . .	February 14, 1962	-
Barbados . . . . .	June 18, 1983	June 18, 1983	Norway . . . . .	January 23, 1963	August 7, 1974
Belgium . . . . .	August 31, 1960	-	Pakistan . . . . .	September 16, 1955	-
Belize . . . . .	December 1, 1982	-	Panama . . . . .	October 17, 1962	September 3, 1980
Brazil . . . . .	January 13, 1960	December 11, 1975	Paraguay . . . . .	March 11, 1962	-
Bulgaria . . . . .	June 7, 1975	June 7, 1975	Peru . . . . .	October 16, 1963	July 22, 1985
Cameroon . . . . .	May 1, 1973	July 10, 1974	Philippines . . . . .	November 19, 1955	-
Canada . . . . .	August 10, 1962	-	Poland . . . . .	March 9, 1977	March 9, 1977
Chile . . . . .	September 16, 1955	-	Portugal . . . . .	December 25, 1956	July 30, 1981
Colombia . . . . .	June 18, 1976	June 18, 1976	Republic of Korea <sup>2</sup> . . . . .	October 1, 1987	October 1, 1987
Costa Rica . . . . .	September 16, 1955	March 7, 1980	Rwanda . . . . .	November 10, 1989	November 10, 1989
Cuba . . . . .	June 18, 1957	-	Saint Vincent and the Grenadines . . . . .	April 22, 1985	April 22, 1985
Czechoslovakia . . . . .	January 6, 1960	April 17, 1980	Senegal . . . . .	July 9, 1974	July 10, 1974
Democratic Kampuchea . . . . .	September 16, 1955	-	Soviet Union . . . . .	May 27, 1973	-
Denmark . . . . .	February 9, 1962	July 11, 1979	Spain . . . . .	September 16, 1955	July 10, 1974
Dominican Republic . . . . .	May 8, 1983	May 8, 1983	Sri Lanka . . . . .	January 25, 1984	January 25, 1984
Ecuador . . . . .	June 5, 1957	-	Sweden . . . . .	July 1, 1961	July 10, 1974
El Salvador . . . . .	March 29, 1979	March 29, 1979	Switzerland . . . . .	March 30, 1956	-
Fiji . . . . .	October 10, 1970	-	Trinidad and Tobago . . . . .	August 19, 1988	August 19, 1988
Finland . . . . .	April 16, 1963	November 1, 1986	Tunisia <sup>2</sup> . . . . .	June 19, 1969	June 10, 1975
France . . . . .	January 14, 1956	July 10, 1974	United Kingdom . . . . .	September 27, 1957	July 10, 1974
German Democratic Republic . . . . .	October 5, 1973	December 10, 1980	United States of America . . . . .	September 16, 1955	July 10, 1974
Germany, Federal Republic of . . . . .	September 16, 1955	July 10, 1974	Venezuela . . . . .	September 30, 1966	-
Ghana . . . . .	August 22, 1962	-	Yugoslavia . . . . .	May 11, 1966	July 10, 1974
Greece . . . . .	August 24, 1963	-	Zambia . . . . .	June 1, 1965	-
Guatemala . . . . .	October 28, 1964	-			
Guinea . . . . .	November 13, 1981	November 13, 1981			
Haiti . . . . .	September 16, 1955	-			
Holy See . . . . .	October 5, 1955	May 6, 1980			
Hungary . . . . .	January 23, 1971	July 10, 1974			
Iceland . . . . .	December 18, 1956	-			
India . . . . .	January 21, 1958	-			
Ireland . . . . .	January 20, 1959	-			
Israel . . . . .	September 16, 1955	-			
Italy . . . . .	January 24, 1957	January 25, 1980			
Japan . . . . .	April 28, 1956	October 21, 1977			
Kenya . . . . .	September 7, 1966	July 10, 1974			
Laos . . . . .	September 16, 1955	-			
Lebanon . . . . .	October 17, 1959	-			
Liberia . . . . .	July 27, 1956	-			
Liechtenstein . . . . .	January 22, 1959	-			
Luxembourg . . . . .	October 15, 1955	-			
Malawi . . . . .	October 26, 1965	-			
Malta . . . . .	November 19, 1968	-			
Mauritius . . . . .	March 12, 1968	-			
Mexico <sup>2</sup> . . . . .	May 12, 1957	October 31, 1975			

<sup>1</sup> According to the information received by the International Bureau.

<sup>2</sup> Pursuant to Article Vbis of the Convention as revised in 1971, this State has availed itself of the exceptions provided for in Articles Vier and Vquater in favor of developing countries.

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

**European Agreement  
Concerning Programme Exchanges by Means  
of Television Films**

(Paris, December 15, 1958)

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

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

(Strasbourg, January 22, 1965)

State	Date on which State became party to the Agreement
Belgium . . . . .	October 19, 1967
Cyprus . . . . .	October 2, 1971
Denmark . . . . .	October 19, 1967
France . . . . .	April 6, 1968
Germany, Federal Republic of . . . . .	February 28, 1970
Greece . . . . .	August 14, 1979
Ireland . . . . .	February 23, 1969
Italy . . . . .	March 19, 1983
Liechtenstein . . . . .	February 14, 1977
Netherlands . . . . .	September 27, 1974
Norway . . . . .	October 17, 1971
Portugal . . . . .	September 7, 1969
Spain . . . . .	March 11, 1988
Sweden . . . . .	October 19, 1967
Switzerland . . . . .	September 19, 1976
Turkey . . . . .	February 17, 1975
United Kingdom . . . . .	December 3, 1967

**European Agreement on the Protection of Television Broadcasts**

*Agreement*

(Strasbourg, June 22, 1960)

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

*Protocol*

(Strasbourg, January 22, 1965)

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

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

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

*Additional Protocol*

(Strasbourg, March 21, 1983)

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

## Governing Bodies and Committees

(Status on January 1, 1990)

### Under Treaties Administered by WIPO

#### Governing Bodies and Committees of WIPO

*General Assembly:* Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guinea, Guinea-Bissau, Haiti, Holy See, Honduras (as from January 25, 1990), Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, South Africa,<sup>1</sup> Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe (106).

*Conference:* The same States as above, with Angola, Bangladesh, Byelorussian SSR, Democratic Yemen, Ecuador, El Salvador, Gambia, Guatemala, Jamaica, Nicaragua, Panama, Paraguay, Qatar, Saudi Arabia, Sierra Leone, Somalia, Swaziland, Ukrainian SSR, United Arab Emirates, Yemen (126).

*Coordination Committee:* Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, Finland, France, German Democratic Republic,

Germany (Federal Republic of), Ghana, Guinea, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Mexico, Netherlands, Nicaragua, Pakistan, Panama, Poland, Portugal, Republic of Korea, Senegal, Soviet Union, Sweden, Switzerland, Syria, United Kingdom, United States of America, Uruguay, Venezuela, Yemen (50).

*WIPO Budget Committee:* Brazil, Canada, Chile, China, Czechoslovakia, Egypt, France, Germany (Federal Republic of), India, Japan, Soviet Union, Switzerland (*ex officio*), United Republic of Tanzania, United States of America, Yugoslavia (15).

*WIPO Premises Committee:* Argentina, Brazil, China, Egypt, France, German Democratic Republic, Germany (Federal Republic of), India, Nigeria, Soviet Union, Switzerland, United States of America (12).

*WIPO Permanent Committee for Development Co-operation Related to Industrial Property:* Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Finland, France, Gabon, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Lesotho, Liberia, Libya, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe (106).

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

*WIPO Permanent Committee for Development Co-operation Related to Copyright and Neighboring Rights:* Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gambia, German Democratic Republic, Germany (Federal Republic of), Ghana, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Israel, Italy, Japan, Jordan, Kenya, Lesotho, Malawi, Malaysia, Mali, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yemen, Zaire, Zambia, Zimbabwe (88).

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

Office, Benelux Trademark Office, European Patent Organisation (75).

### Governing Bodies of the Berne Union

*Assembly:* Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, Fiji, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, Holy See, Honduras (as from January 25, 1990), Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Lesotho, Liberia, Libya, Liechtenstein, Luxembourg, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Pakistan, Peru, Philippines, Portugal, Romania, Rwanda, Senegal, South Africa,<sup>1</sup> Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia, Zaire, Zimbabwe (79).

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

*Executive Committee:* Belgium, Bulgaria, Cameroon, Canada, Chile, Colombia, Côte d'Ivoire, Czechoslovakia, Germany (Federal Republic of), Guinea, India, Ireland, Italy, Mexico, Netherlands, Pakistan, Poland (*associate member*), Portugal, Sweden, Switzerland, Venezuela (21).

### Intergovernmental Committee of the Rome Convention

Brazil, Chile, Colombia, Denmark, Finland, France, Germany (Federal Republic of), Mexico, Niger, Philippines, United Kingdom, Uruguay (12).

## Under Other Treaties

### Intergovernmental Committee of the Universal Copyright Convention

Algeria, Australia, Austria, Brazil, Colombia, Denmark, France, Germany (Federal Republic of), Guinea, India, Israel, Japan, Mexico, Portugal,

Senegal, Soviet Union, Tunisia, United Kingdom (18).

**High Officials of WIPO****(Status on January 1, 1990)**

Director General: Dr. Arpad Bogisch

Deputy Directors General: Lev Efremovich Kostikov  
Alfons A. Schäfers  
Shahid Alikhan



## Notifications Concerning Treaties

### Berne Convention

#### Notification Concerning Withdrawal of Reservation Made Under Article 33

#### HUNGARY

The Government of Hungary deposited, on December 18, 1989, a notification by which it withdrew the reservation, made in 1972,\* to Article 33(1) of the Berne Convention for the Protection

of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971.

*Berne Notification No. 127, of December 21, 1989.*

\* See *Copyright*, 1972, p. 199.

## Activities of the International Bureau

### WIPO—Overview of Activities and Developments in 1989

#### Introduction

The year 1989 was marked by increased international cooperation in the field of intellectual property:

- a sturdy growth in the Organization's development cooperation program in favor of developing countries;

- the successful conclusion of three diplomatic conferences relating to the creation of an international register of audiovisual works, the protection of intellectual property in respect of integrated circuits and improvements to the international system of registration of marks;

- a new start and impetus to the presentation and exchange of industrial property information;

- a continued surge in the international registration activities of the Organization in respect of patents, marks and industrial designs;

- the adoption by member States of a substantial program of work for the Organization in the 1990-91 biennium;

- new accessions of States to various treaties administered by WIPO; and

- the strengthening of cooperation with member States and intergovernmental and non-governmental organizations.

#### Development Cooperation Program

The main objectives of WIPO's development cooperation program are: assisting developing countries in the establishment or modernization of intellectual property systems suited to their development goals through developing human resources; facilitating the creation or improvement of national or regional legislation and their enforcement; encouraging domestic inventive and creative artistic activity and the exploitation of its results; facilitating the acquisition of foreign patented technology, and the access to foreign works protected by copyright; facilitating the access to and the use of technological information contained in patent docu-

ments and facilitating participation in certain WIPO meetings.

WIPO's training activities are meant to provide or enhance professional skills and capacities for the effective administration and use of the intellectual property system. In 1989, training, both at home and abroad, was given to government officials and personnel from the technical, legal, industrial and commercial sectors.

Such training took various forms. One is in the form of study attachments overseas and on-the-job supervision by international experts. This form of training involved the participation of over 70 international experts deployed for varying periods of time in some 35 countries with, in many cases, repeated visits to the same countries.

Training was also provided in the form of courses, study visits, workshops and seminars. More such events were organized by WIPO in developing countries and more experts from developing countries were invited as speakers in 1989 than in 1988. In all, a total of 100 such events were organized at the national, subregional, regional and global levels. They provided basic knowledge of industrial property or copyright, or specialized information, both theoretical and practical, in areas such as search and examination with respect to patents and trademarks, computerization of industrial property office administration, the use of computerized patent information data bases, the administration of the collection and distribution of copyright royalties and the promotion of innovative activities. Most of this form of training took place in developing countries themselves and allowed large numbers of people from the government and private sectors of those countries to learn about the subject of intellectual property and its role in the development process. In all, 44 developing countries hosted or co-organized (with WIPO) those events. Their contribution was in funds or in kind. Over 4,000 people from those countries attended as participants.

To be highlighted here is the Worldwide Symposium on the International Patent System in the 21st Century which took place in Beijing, organized jointly by WIPO and the Chinese Patent Office to

coincide with ceremonies commemorating the fifth anniversary of the Chinese Patent Law and the inauguration of the new building of the Chinese Patent Office. It was the first meeting of its kind where the future trends and likely developments in the patent community were discussed by eminent personalities before several hundred participants coming from over 50 countries.

The existence of appropriate national legislation is a precondition for ensuring optimal benefits from the use of the intellectual property system by a country. WIPO therefore continued in 1989 to lay emphasis on the advice and assistance it gives to developing countries in this area. WIPO prepared draft laws and regulations which, depending on the country in question, dealt with one or more aspects of intellectual property, or commented on drafts prepared by the countries themselves. In all, some 30 countries benefited from this aspect of WIPO's development cooperation program. A number of governments informed WIPO that the executive or legislative branches had approved laws or regulations which were based on drafts drawn up by the International Bureau of WIPO or commented upon by it.

Two hundred and eighty-five advisory missions were undertaken to some 75 developing countries. Those missions, comprising WIPO officials and WIPO consultants, provided, *inter alia*, advice to government administrations on improvements to management of industrial property offices, the acquisition and use of computers and other equipment and documentation and the provision of better patent information services to the public. In planning and implementing such missions in a given country, WIPO relied, as in the past, on that country for the identification of its needs and for guidance in relation to particular local conditions. In return, WIPO offered expertise blended with experience gained from practical knowledge of the situation in other countries. This ensured that the advice and assistance given by WIPO were appropriate to the country in question.

In seeking to help developing countries in encouraging domestic inventive activity, WIPO offered advice in the drafting of legislative provisions for the establishment of suitable institutional arrangements in favor of inventions and organized conferences and seminars to discuss policy measures designed to support inventors in their endeavors. Moral recognition of achievements remained a major source of satisfaction to these people; WIPO continued therefore with its WIPO Gold Medal Award scheme for exceptional work done by inventors and creators, mainly in the context of special exhibitions.

The acquisition of foreign patented technology and access to foreign works protected by copyright,

particularly in the context of new technologies (biotechnology, computer software, broadcasting by satellite, integrated circuits) and their protection under intellectual property laws, was the subject of three regional forums that WIPO especially organized for developing countries in 1989. They took place in Cairo, Seoul and Montevideo. The licensing of intellectual property was the focus of an international forum which WIPO organized in Moscow on the role of intellectual property in economic cooperation arrangements. The forum was attended by many participants from developing (and industrialized) countries.

WIPO continued to promote a dialogue between intellectual property administrations and their users, primarily in the non-government sectors. Such a dialogue was often arranged in the form of participation by both sides in discussions provided for that purpose in the seminars and symposia organized by WIPO.

As far as encouraging the effective use of the vast resource of technological information contained in patent documentation was concerned, there was a steady increase in the demand for WIPO's free state-of-the-art search service for developing countries. Over 560 search reports and 4,500 copies of patent documents were furnished to requesting governments and institutions in developing countries.

In general, WIPO's development cooperation program had a fruitful year. Participation by countries, whether as donors or beneficiaries (or both), was almost universal: 116 developing countries and 16 intergovernmental organizations benefited from that program while generous support, both in funds and in kind (expert services, equipment, documentation, training facilities, hosting of meetings), was given by 55 developing and industrialized countries and 13 intergovernmental and non-governmental organizations.

Deserving special mention are the following countries and intergovernmental organization which made substantial funds available to WIPO for its development cooperation program: Finland, France, Germany (Federal Republic of), Japan and Sweden through funds-in-trust, and the United Nations Development Programme (UNDP) through interregional, regional and country projects.

The said program was reviewed and evaluated, and comments and suggestions for future activities were given, by member States and organizations at the 1989 sessions of the WIPO Permanent Committee on Development Cooperation Related to Industrial Property and the WIPO Permanent Committee on Development Cooperation Related to Copyright and Neighboring Rights in May/June and April, respectively.

### Setting of Norms and Standards

The objective of WIPO in this area of work is to make the protection of intellectual property rights more effective throughout the world. "More effective" means that the norms (standards) of protection are raised, where necessary, to the required level and that the enforcement of those rights will be easier and the sanctions for infringement strict.

The major achievements in this area of work in 1989 were the conclusion of two new treaties, one by the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works (held in April in Geneva) and the other by the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits (held in May in Washington).

The first above-mentioned Conference unanimously adopted, on April 20, 1989, a treaty consisting of 17 articles under the title "*Treaty on the International Registration of Audiovisual Works*" and Regulations under that Treaty.

The Treaty provides for the establishment, under the auspices of WIPO, of an international register of audiovisual works for the purpose of recording, mainly, statements concerning rights in such works, for example, concerning who is the owner of what rights in which countries. The International Register has a legal effect: statements registered in it must be considered as true until the contrary is proved. The rebuttable presumption thus created by the Treaty is subject to two exceptions: one is that the presumption does not apply in a State in which the statement cannot be valid under the copyright law or any other law concerning intellectual property rights in audiovisual works in that State; the other is that the presumption does not apply where the statement is contradicted by another statement recorded in the International Register. The system will be financially self-supporting, i.e., it will be financed by the fees paid by its users.

The International Register will be kept by the International Registry, which will be an administrative unit of the International Bureau of WIPO. A specific feature is that the Treaty provides for the setting up, by the Assembly, of a consultative committee consisting of representatives of interested non-governmental organizations. The purpose of that committee is to achieve close cooperation between the Union and the main prospective users of the Register. The Committee will be consulted, *inter alia*, before determining or changing the system and amounts of the fees. The International Registry will be located in Austria. A treaty to that effect was signed by the Government of Austria and the Director General of WIPO in October.

The Treaty was open for signature until December 31, 1989. It was signed by 17 States: Austria, Brazil, Burkina Faso, Canada, Chile, Egypt, France, Greece, Guinea, Hungary, India, Mexico, Philippines, Poland, Senegal, United States of America, Yugoslavia.

The Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits adopted, on May 26, 1989, a treaty consisting of 20 articles under the title "*Treaty on Intellectual Property in Respect of Integrated Circuits*" by the votes of 49 countries for it, two against and five abstentions.

The Treaty obliges the Contracting Parties to secure, throughout their respective territories, the intellectual property protection of layout-designs (topographies), to provide adequate measures to ensure the prevention of acts considered unlawful under the Treaty and to provide appropriate legal remedies wherever such acts have been committed. Furthermore, the Treaty enables certain intergovernmental organizations to become Contracting Parties (the European Communities are eligible) and provides for a mechanism, within the framework of WIPO, for the settlement of possible disputes between Contracting Parties.

The Treaty remains open for signature until May 25, 1990, at the headquarters of WIPO.

As far as work on the *harmonization of patent laws* was concerned, considerable advance was made. The Committee of Experts dealing with this matter held its sixth and seventh sessions in April and November, respectively, to consider the draft Treaty which deals with the following substantive matters: filing date, naming of inventor and declaration concerning the entitlement of the applicant, description, claims, unity of invention, publication of application, time limits for search and substantive examination, administrative revocation of patents, priority claims, changes in patents, patentable inventions, prior art effect of certain applications, grace period, exclusions from patent protection, right to a patent, rights conferred by a patent, reversal of burden of proof, extent of protection and interpretation of claims, term of patents, maintenance fees, remedies, privilege of prior user.

The International Bureau will redraft the articles (except the one on maintenance fees which has been dropped) in the light of the discussions of the above-mentioned two sessions and will submit the new drafts to the presumably last (eighth) session of the Committee of Experts in June 1990, followed immediately by the (only) session of a Preparatory Meeting. The Committee will examine the new draft of the proposed Treaty, while the Preparatory Meeting will prepare the organization of the diplomatic conference which is scheduled for June 1991.

A consultative meeting for developing countries will take place just before the June 1990 session of the Committee of Experts.

Work on the *harmonization of trademark laws* started in November when a new Committee of Experts held its first session. As in the case of the harmonization of patent laws, the aim is to prepare a draft of a treaty which would supplement the Paris Convention for the Protection of Industrial Property and which should be adopted by a diplomatic conference (after 1991). The said first session dealt with draft articles on the definition of the notion of mark (trademark and service mark), the applications for their registration and registration as well as the program of its second session scheduled for June 1990.

In respect of work on *model provisions for legislation in the field of copyright*, there was considerable progress. The Committee of Experts dealing with this matter held its first and second sessions in February/March and November.

The Committee of Experts considered draft model provisions dealing with the following matters: the subject matter of protection, rights protected, limitations on economic rights, duration of protection, ownership of rights, transfer of rights (including licenses and waiving the exercise of moral rights), collective administration of economic rights, obligations concerning equipment used for acts covered by protection, measures, remedies and sanctions in case of piracy and other infringements.

The model provisions are intended to inspire and influence governments and legislators to improve their copyright laws and opt for solutions that will increase the degree of similarity among legislations whenever the special interests of a country do not require different solutions.

One more session of the Committee is scheduled for July 1990 when it should have completed its work on the text of the model provisions.

#### **Revision of the Paris Convention for the Protection of Industrial Property**

The sixth Consultative Meeting on the revision of the Paris Convention took place in September. Its recommendation was submitted to the Assembly of the Paris Union which decided, in October, on the following: the Diplomatic Conference on the revision should take place in the 1990-91 biennium; the Director General of WIPO should prepare new proposals for amending the articles of the Paris Convention which were under consideration for revision; the Assembly would meet in extraordinary session in January 1991 to fix the further procedural steps and to take cognizance of the afore-

mentioned proposals of the Director General; the said extraordinary session would be preceded by an information meeting of developing countries of the Paris Union and China and, if it was so desired, information meetings of any other group of countries members of the Paris Union, to discuss the proposals of the Director General; there would be, among the said procedural steps, at least one preparatory meeting in the first half of 1991 to consider the proposals of the Director General.

#### **Intellectual Property Information**

WIPO commenced publication, as a quarterly, of the Spanish version of its copyright review, entitled *Derecho de Autor*.

In respect of industrial property information, the reorganized Permanent Committee on Industrial Property Information met in September and decided that, in respect of international cooperation in the next decade in the field of patent information, the Committee and all its working groups concerned should give the highest priority to promoting the adoption, by patent offices, other public institutions and private enterprises, of such electronic systems for the storage of full texts (including drawings) of patent documents, and such systems for the searching of the stored material (even if not the same) as would allow mutual access and mutual searchability among all the said systems.

The fifth edition of the International Patent Classification was published in 10 volumes.

#### **International Registration Activities**

The number of international registrations under the Patent Cooperation Treaty (PCT), the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Deposit of Industrial Designs confirmed the healthy growth in each of the three registration systems. The growth in 1989, compared to 1988, was about 25% in the PCT system, 18% in the Madrid system and 18% in the Hague system. This growth made necessary several new computerization measures, some of which became operational already in 1989.

#### *The Patent Cooperation Treaty*

Spain deposited its instrument of accession to the Patent Cooperation Treaty (PCT) in August and Canada in October. With those two countries, the PCT now has 43 Contracting States. More than 90% of all the patent applications filed in the world

are filed in those 43 countries. A few countries with relatively large numbers of applications are still not party to the PCT (e.g., China and Latin American countries) but it is hoped that they will be in the years to come. The PCT is now in its 12th year. Its use, although constantly increasing, is still far from having attained its full potentiality.

In 1989, the number of record copies of international applications received by the International Bureau amounted to 15,000. The 25% increase in the number of record copies received could be attributed mainly to the increasing awareness of inventors, industry and patent attorneys of the advantages offered by the PCT.

The average number of Contracting States (to the PCT) designated per international application was 16.25. About 15% of the applications contained more than 10 designations, and their applicants thus benefited from the advantage of the maximum amount of the designation fee according to which any designation in excess of 10 is free of charge.

In view of the advance in technology and the continuing growth of the level of PCT activity, the International Bureau has started planning to put all the international applications and the correspondence pertaining to each on optical disks, which should facilitate rapid and accurate access for all interested offices and private parties and make publications more economical.

The PCT Union Assembly decided in October that a working group would be convened in the 1990-91 biennium to consider the possibilities of further increasing the internationalization of the grant of patents.

### *The Madrid Registration of Marks Agreement*

The system of the international registration of marks, maintained by the International Bureau since 1893, now has 29 countries as members.

In 1989, the number of international trademark registrations received by the International Bureau was 15,400, an increase of 18% over that of 1988.

In view of this growth, it is planned to have all the some 250,000 files of internationally registered marks stored on optical disks starting in the 1990-91 biennium. Such a computerization measure will be useful not only to the International Bureau but also to national trademark offices and the private sector using the system.

The Madrid Union Assembly approved, in October, an average 8% increase in the amount of Madrid fees, with effect from April 1, 1990.

In June, a Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of

Marks was held in Madrid. The Conference unanimously adopted, on June 27, 1989, a new treaty entitled "*Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*."

The main changes that the Madrid Protocol will introduce in the Madrid system are as follows:

- the Protocol allows that, at the option of the applicant, international registrations be based on national applications (and not only on national registrations);
- the Protocol allows, as an option for the Contracting Parties, 18 months (instead of one year) for refusals and an even longer period in the case of oppositions;
- the Protocol provides that the national office of a designated country may, if it so desires, receive the amount of the fees that it charges for national registration or renewal, the said amount being diminished by the savings resulting from the international procedure;
- the Protocol allows the transformation of a failed international registration—failed, for example, because of central attack—into national applications in each designated country, and such national applications will have the filing date and, where applicable, the priority date of the international registration.

Those changes are intended to remove certain impediments to a wider acceptance of the Madrid system.

Another objective of the Protocol is to establish a link between the Madrid system and the expected future regional trademark registration system of the European Communities. Once the Community trademark system becomes a reality, the European Communities will have the right—as provided in the Protocol itself—to become a party to the Protocol.

The Protocol, which was open for signature until December 31, 1989, was signed by 28 States: Austria, Belgium, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Mongolia, Morocco, Netherlands, Portugal, Romania, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, Yugoslavia.

In October, the Assembly of the Madrid Union approved the establishment of a working group in the 1990-91 biennium to prepare the draft of new Regulations and to suggest other measures required by the co-existence of the Madrid (Stockholm) Agreement and the Madrid Protocol.

### *The Hague (International Deposit of Industrial Designs) Agreement*

This Agreement and the system of international deposit it establishes are, in 1990, in their 64th year of existence.

In 1989, the number of industrial design deposits received by the International Bureau was 3,200, an increase of 18% over that of 1988. As this growth is expected to continue in the foreseeable future, the Assembly of the Hague Union decided, in October, that the International Bureau should begin computerization of the operations in the 1990-91 biennium.

In October, the Hague Union Assembly agreed that in the 1990-91 biennium, a working group would be convened to consider concrete possibilities for revising the Hague Agreement or adding a protocol to it, in order to introduce in the system further flexibility and other measures encouraging States not yet party to it to adhere to the Hague Agreement and make it easier to use by applicants.

### **Governing Bodies of WIPO; Work Program in the 1990-91 Biennium**

In September and October, the ordinary sessions of the Governing Bodies took place. There are now 22 such bodies, among them the General Assembly, the Conference and the Coordination Committee of the World Intellectual Property Organization and the Assemblies of the Paris, Berne, IPC, Nice, Lisbon, Locarno, PCT, Madrid and Hague Unions.

The Governing Bodies took decisions on a number of important questions, some of which are mentioned earlier in this report under the respective headings of the different subject matter dealt with above. The competent Governing Bodies fixed the program and budget of the International Bureau for the 1990-91 biennium.

### *New Activities*

Among the new activities to be carried out in that biennium are the following:

(i) the convening of a committee of governmental experts to examine whether the preparation of a *protocol to the Berne Convention for the Protection of Literary and Artistic Works* should start, and—if so—with what content, with a view to submitting for adoption the draft of such a protocol to a diplomatic conference after 1991. The protocol would be mainly destined to clarify the existing, or establish new, international norms where doubts may exist as to the extent to which that Convention applies.

The committee will meet for the first time in October 1990;

(ii) the convening of a committee of governmental experts to examine whether the preparation of a *new treaty on the settlement of disputes between States in the field of intellectual property* should start and, if so, with what content, with a view to eventually (after 1991) submitting for adoption the draft of such a treaty to a diplomatic conference. The committee is scheduled to meet for the first time in February 1990;

(iii) the convening of a committee of governmental experts to advise on the possible conclusion of a *new treaty or the possible revision of the Lisbon Agreement on the Protection of Appellations of Origin and their International Registration* and the possibilities of increasing the use of the registration facilities of that Agreement. The first meeting of the committee is scheduled to take place in May 1990;

(iv) the convening of a committee of governmental experts to advise on a *model law on intellectual property protection in respect of integrated circuits*. It is scheduled to meet for the first time in 1991;

(v) the convening of the fourth session of the committee of governmental experts (which has met three times between 1986 and 1988) to finalize its advice on a *model law on counterfeiting and piracy*;

(vi) the convening of two further meetings of the Committee of Experts on *biotechnological inventions* in order to further consider, and preferably complete its advice on, the solutions to be given to various questions concerning the patent protection of biotechnological inventions and the interface, in certain cases, of that protection with the protection available under plant breeders' rights systems. The first meeting, jointly organized with the International Union for the Protection of New Varieties of Plants (UPOV), will take place in January 1990;

(vii) the preparation of a study of the possibilities of establishing a *mechanism to provide services for the resolution of disputes between private parties* over intellectual property rights. Recourse to such a mechanism and services—that could be called, for example, “WIPO Intellectual Property Arbitration Center”—would be open to private parties (not governments) on a completely voluntary basis, that is, each dispute would come to the mechanism only if all parties to the dispute freely decide that it should;

(viii) the convening of a worldwide symposium on the intellectual property aspects of “*artificial intelligence*”;

(ix) the convening of a group of consultants to consider what advice should be given to governments in respect of the *collective administration of*



certain rights—particularly musical performance rights—in the field of copyright. Such advice should be useful in countries in which legislation on the matter does not exist or is incomplete or in which experience in the field is limited. The consultants are scheduled to meet in March 1990;

(x) the preparation of analyses and/or the convening of meetings to study the questions of *individual* (as distinguished from collective) *contracts assigning or licensing rights in the field of copyright*, of the *prevention and repression of unfair competition*, of the role of intellectual property in the field of *franchising*, and "*character merchandizing*" (the use of the name, picture, voice and statements of a real or fictitious personality to promote the sale and use of certain products or services). On the basis of the results of those studies and meetings, further action will be planned for the period after 1991.

#### *New Contribution Class for Least Developed Countries*

In recognition of the difficulties faced by developing countries in meeting their obligation to make contributions under the various treaties, the Governing Bodies decided in October to institute a new contribution class with 1/8 (one-eighth) of a unit (the current lowest contribution class consists of one unit); this new class is applied, since January 1, 1990, to countries which, according to the practice of the United Nations, are considered to be least developed countries. The Governing Bodies also set up a WIPO Working Group on Contributions, consisting of nine States, to propose possible further measures in the field of contributions.

#### *Additional Premises*

The Governing Bodies set up a committee of representatives of member States called "WIPO Premises Committee," with the task of giving advice to the interested Governing Bodies and the Director General concerning the needs of WIPO for premises until the year 2000 and meeting those needs through building additional premises, or through renting premises, or in any other way, in or outside Geneva.

#### *New Accessions to Treaties*

As far as the work of WIPO in promoting the worldwide recognition of and respect for intellectual property was concerned, ratifications and accessions to various treaties administered by WIPO took place in 1989 in respect of the following countries: Democratic Yemen, Madagascar and

Thailand to the *WIPO Convention*, which brought the total number of Contracting States to 126; Lesotho to the *Paris Convention*, which brought the total number of Contracting States to 100; Honduras, Lesotho and Mauritius to the *Berne Convention*, which brought the total number of Contracting States to 84; Czechoslovakia and the German Democratic Republic to the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, which brought the total number of Contracting States to 24; Canada and Spain to the *Patent Cooperation Treaty*, which brought the total number of Contracting States to 43; China and Cuba to the *Madrid Agreement Concerning the International Registration of Marks*, which brought the total number of Contracting States to 29; Japan to the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, which brought the total number of Contracting States to 34.

#### **Cooperation with Intergovernmental and Non-Governmental Organizations**

WIPO continued, throughout the year, its tradition of close cooperation and consultations with intergovernmental and non-governmental organizations having an interest in the work of WIPO. Such organizations were invited to participate, and many did, as observers in almost all the meetings organized by WIPO, including the aforementioned three diplomatic conferences.

The Governing Bodies approved, in October, the admission of two more intergovernmental organizations and 13 international non-governmental organizations as observers, thereby bringing the total of such organizations with observer status in WIPO to 96.

Insofar as cooperation in the GATT Uruguay Round of Trade Negotiations was concerned, the Director General convened, in March, an informal information meeting at WIPO headquarters for officials of Permanent Missions of developing countries in Geneva for the purpose of giving information on intellectual property matters of possible relevance to the Uruguay Round negotiations as far as the trade-related aspects of intellectual property are concerned.

The International Bureau was represented at the four sessions of the GATT Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods ("TRIPS"), which were held during the year.

At the invitation of the said Negotiating Group, the International Bureau prepared a document on



the basic principles of the main multilateral treaties in the field of intellectual property and a document containing information on WIPO activities. The first document dealt with the essence of seven basic principles relating to parties to the treaties, beneficiaries, national treatment, norms, non-reciprocity, independence of protection and settlement of disputes. The second document contained information on WIPO activities relating to counterfeit-

ing/effective protection of intellectual property, revision of the Paris Convention, harmonization of patent and trademark laws, integrated circuits, biotechnological inventions, model provisions in the field of literary and artistic works, impact of emerging technologies on the law of intellectual property and international registration of audiovisual works. The former document was separately published as a WIPO document and as a GATT document.

## Studies

### The Concept of "Author" in Copyright Law— Some Reflections on the Basis of Copyright Law in the United Kingdom

Jeremy PHILLIPS\*

The traditional distinction between the common law and civil law approaches to copyright is founded upon a question of terminology: what Britons and their cultural heirs call "copyright," meaning a right which vests by virtue of there being "copy," a thing in itself, the civilists call "author's right," indicating a right which exists by virtue of the intellectual effort or activity of an author, a creator. Much has been made of this distinction by commentators. It is however remarkable that common law and civil law traditions have been able to provide comparable legal solutions—and to cohabit beneath the blanket of the same international conventions for more than a century—without much friction or animosity.

The thesis of this article is that, at least in the United Kingdom, trends in technological development and legal drafting are shaping in the Copyright, Designs and Patents Act 1988 a concept of protection which is further away from "author's right" than has been the case at any time since the passage of the first English copyright statute in 1709.

#### *Creative Concepts in 1709*

The Statute of Anne 1709 knew of only four entities within the field of commerce in books, the only mass-produced copyright-carrying products of that time: the author, the author's assignee, the printer of books and the seller of books. Since books were written by authors and no other forms of creative intellectual output fell to be considered by Parliament at that time, "author" was the only term necessary for the identification of the creator of protected text. Incidentally, while three other parties were also featured in the 1709 law, it was apparent even then that the separate functions of

assignee, printer and seller might well be combined in the body of one party, the printer/publisher who belonged to the then-powerful Stationers' Company which, prior to 1709, had exercised a virtual stranglehold, if not actually a monopoly, on the printing and distribution of books in England.

#### *The Meaning of "Author" in the Berne and Universal Copyright Conventions*

What guidance do the principal international conventions give as to our understanding of the concept of the author, the creative force in the making of a copyright work? Relatively little, it is submitted.

While the term "author" is extensively used in the Berne Convention, it has never been defined. An attempt made by Austria to have a definition included in the 1948 Brussels revision was rejected, probably on the sensible ground that the introduction into that Convention of a definition of an integral term, more than 60 years after the Convention came into force and after six decades of relatively trouble-free interpretation of the concept, its subsequent definition—even if it were found universally agreeable to Berne members—would raise the implication that its inclusion was sought to repair a previous defect in the text. If such a defect were not perceptible to Berne's members, efforts would soon have been made to detect and explain it, perhaps with the unfortunate result that subsequent confusions, ambiguities and complications would mar a previously unspoilt area of the treaty's application.

Sam Ricketson has suggested<sup>1</sup> that the word "author" was probably undefined in 1886 because there was consensus between the delegations as to what the word meant. The phrase "literary and artistic work" was however subject to more sub-

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<sup>1</sup> *The Berne Convention for the Protection of Literary and Artistic Works: 1886-1986*, § 5.2.

stantial analysis, it being agreed that such a work should require an element of intellectual creativity. The word "author" could thus, Ricketson submits, be said to indicate a person—real rather than legal—who has made an intellectual creation in the form of a literary or artistic work. For such a person the term "author" seems quite appropriate, at least when compared to the manner in which "author" is employed by Berne Convention signatory, the United Kingdom, in the 1988 Act.

The Universal Copyright Convention (UCC), the junior convention which was made in Geneva in 1952, also provides protection for authors, in respect of a similar spread of what we term "authors' rights." Neither in the 1952 Geneva text nor in the 1971 Paris text is there any definition of the word "author." Nor is there any indication that its signatories, many of whom are also Berne signatories, intended that—while a lesser degree of protection might be allowed for under the UCC than under Berne—the term "author" was to be construed in a different manner from Berne.

The conclusion we can draw from this brief examination of the two Conventions is that, while neither define the term "author," there is some evidence to suggest that they both intended the term to apply to the human agency of creation of what is the "message" (to use Marshall MacLuhan's terminology) rather than the "media" through which the message is disseminated.

### *The 1956 Act: Parts I and II*

The Copyright Act 1956 provided bipartite protection under the law. Authors' works of the type protected by the Berne and Universal Copyright Conventions (with the exception of cinematograph films) were protected together as "works" under Part I of that Act, while forms of dissemination of such works—not themselves called "works" but merely "subject-matter"—were protected by a neighboring rights code under Part II of the Act. The term "author" was employed in respect of literary, dramatic, musical and artistic works (sections 2 and 3), while the two most important species of subject-matter in 1956, sound recordings and films, were treated by the vesting of copyright in their "maker." In respect of those subject-matters, "maker" was something of a misnomer: the "maker" of a sound recording was deemed to be *not* the person who actually made it but the person who owned the recording material upon which the sounds were recorded (section 12(8)); the "maker" of a film was the person by whom arrangements for its making were undertaken (section 13(10)).

As to the other types of "subject-matter," the person entitled to the right in a published edition of

a literary work was the "publisher," not the typesetter who actually constructed, through his skill and labor, the typographical layout of the printed page (section 15(2)); the rights in a broadcast could only vest initially in one of two parties, the British Broadcasting Corporation or the Independent Television Authority (later the Independent Broadcasting Authority), irrespective of whether the program broadcast was created by either party or even of whether it was actually broadcast by it.

Thus, in summary, the term "author" was used of the human agency by which an author's work was generated, while other terminology was used for copyright subject-matter other than authors' works.

### *Creation Under the 1988 Act*

The situation established under the Copyright Act 1956 has changed radically under the Copyright, Designs and Patents Act 1988,<sup>2</sup> where "author" has been given its widest application ever under British law.

It is true that the anomalous provision of the Copyright Act 1956, section 48(1), giving the status of "author" to the person who owned the film upon which a photograph was taken, has been repealed and that, under the 1988 Act, section 9(1), the author of a photograph is now the person who creates it. Further amendments to the law have also resulted in the welcome position that, where one person delivers an impromptu unscripted speech which another records or writes down, it is the speaker of the words who is the author (section 9(1) in conjunction with section 3(3)). However, elsewhere in the 1988 Act we find the concept of the author to have been contorted by the exigencies of draftsmanship.

The basic premise of section 9 of the 1988 Act is unobjectionable. Under section 9(1) it is stated that "...author", in relation to a work, means the person who creates it." However, it will later be seen that the term "author" as employed in this legislation has a far wider meaning than is given to the notion of "author" under the Berne and Universal Copyright Conventions. Indeed, some critical analysts of the Act have gone so far as to suggest that the word "author" is intended as being no more than a vehicle of vocabulary, a convenient means of avoiding circumlocution and verbosity; in short, the "author" is not merely the beneficiary of the author's right; the word instead connotes a term of art.

<sup>2</sup> See *Copyright*, insert *Laws and Treaties*, October, November & December 1989, text 4-01.

Under section 9(2) we learn that "author" is taken to mean different things in different instances. The following list indicates how he is defined with regard to types of works:

*Sound recordings and films:* "...the person by whom the arrangements necessary for the making of the recording or film are undertaken" (section 9(2)(a));

*Broadcasts:* "...the person making the broadcast..." (section 9(2)(b));

*Cable programmes:* "...the person providing the cable programme service in which the programme is included" (section 9(2)(c));

*Typographical arrangements of works:* "...the publisher" (section 9(2)(d));

*Computer-generated works* (i.e. those generated by computer in circumstances such that there is no human author of the work: section 178): "...the person by whom the arrangements necessary for the creation of the work are undertaken" (section 9(3)).

From this list we see that the term "author" is now used to cover not only the creator of an author's work but the person entitled to neighboring rights. Since the distinction between authors' rights and neighboring rights has been abolished by the 1988 Act, it must have seemed unnecessary to employ different terminology to describe the maker of a film or sound recording, the broadcaster or cable program provider, or the publisher of a typographical edition of a work—notwithstanding the fact that those terms are both accurate and descriptive.

Having chosen to include within the one term "author" the parties involved in the creation or exploitation of all works protected under Part I of the 1988 Act, specifying that this definition of author would apply *only* in Part I of the Act, the legislature then proceeded to give different terminologies to types of work protected elsewhere in the same Act. Thus Part II of the Act protects rights in performances; that is, it prevents the unauthorized recording or copying of records of performances. Rights are conferred upon the person whose performance it actually is, as well as upon any person who has rights in relation to a performance (section 180(1)). The creator of a performance is termed the "performer," not the "author" of his performance, which is quite justifiable—but is the performer of a dramatic or musical performance really further removed from being an "author" than the "person by whom the arrangements necessary for the making of the recording or film are undertaken?"

Part III of the Act protects a new category of copyright work: "design right" in original, non-commonplace features of shape or configuration,

other than surface patterns, which are not wholly determined by their physical or aesthetic function in relation to other products. This right was introduced so as to remove the anomaly under British copyright law that a registered design, having some aesthetic content, would enjoy protection only after compliance with registration formalities and for a maximum of 15 years while a functional drawing, lacking aesthetic appeal and therefore unregistrable, could enjoy artistic copyright protection for the full copyright term of life plus 50 years. Under the old law the creator of a design for registration was its "author" (Registered Designs Act 1949, section 2), just as the creator of a non-registrable design was also its author (Copyright Act 1956, section 4(1)). Now that there is an unregistered design right, in addition to artistic copyright and registered design right, one would have imagined that the word "author," employed with good effect and without confusion, hardship or ambiguity, would have served equally well for the new right. This is not however the case: "author" is abandoned in favor of "designer" (section 215). Surely this should not have been necessary since, in relation to a design, the word "designer" is defined as "...the person who creates it" (section 214(1)) which is exactly the same definition as that of "author" in Part I of the same Act.

### "Author" and the *Droit Moral*

The 1988 Act grants United Kingdom authors for the first time a statutory right to claim authorship of their works (section 77) and to object to distortions and mutilations (section 80). This right vests in the "author" of literary, dramatic, artistic and musical works, together with the "director" of a film. The word "director" is not defined, which means that the full and precise meaning of this term is open to judicial interpretation. The word "author" could not be used, in relation to a film, because that term had already been given the artificial meaning (under section 9(2)(a)):

...the person by whom the arrangements necessary for the making of the recording or film are undertaken.

It is only the director of a film, not the "director" or "author" of a sound recording, who can assert his *droit moral* in like manner to the traditional author. This gives us the curious anomaly that, while the director of a film can assert his right to be identified even on copies of the film's soundtrack issued to the public (section 77(7)), the creator of a sound-track to which no film is attached has no right to be identified as its creator. A similar position pertains in respect of the moral right to object to mutilations and distortions (section 80(6)).

### Transitional Provisions

The transitional provisions of the 1988 Act are contained in Schedule 1, paragraph 10, which states:

The question who was the author of an existing work [i.e. one which was already in existence on August 1, 1989 when the new Act came largely into force] shall be determined in accordance with the new copyright provisions for the purposes of the rights conferred by Chapter IV of Part I (moral rights), and for all other purposes shall be determined in accordance with the law in force at the time the work was made.

The effect of this provision is that the author of a photograph taken 10 years ago is the owner of the film upon which the picture was taken but that, in respect of infringements of *droit moral* of the same photograph, it is the photographer who is its "author." However, a cinematograph film made 10 years ago has no "author" (it is a "subject-matter" protected by Part II of the Copyright Act 1956 and its creator is its "maker" under section 13(10)); while under the 1988 Act its "author" is the person who undertook the arrangements for making it, no *droit moral* will be enjoyed in it because, under Chapter IV of the 1988 Act, that right is enjoyed by its "director" (sections 77 and 80). While paragraph 10 of Schedule 1 ensures that, for *droit moral* purposes, "author" of an existing work is to be understood under the new copyright provisions, the definition of "author," so far as concerns films, does not mention "director." It would be unfair to suggest that this is simply an oversight caused by over-complexity in the drafting, but it is difficult to explain this omission in terms of positive policy.

A further curiosity relates to the fact that, where a copyright work is a spoken speech or a spontaneously-composed melody which is written down or recorded at a later time than its first utterance or performance, the time of the making of the work—for copyright purposes—is the date upon which it is recorded (section 3(2)). If such a work was therefore created and delivered before the date of the coming into force of the 1988 Act, but was not recorded until after that time, it will be regarded as having been made after that date and will thus be governed by the new law.

### A Prevalent Trend?

It is interesting to note that the downplaying of the significance of the concept of "author" is not a phenomenon which is unique to the United Kingdom. In the United States of America, for instance, the otherwise undefined term "author" is made to encompass "the employer or other person for whom the work was prepared" under 17 USC § 201(b). This definition gives an extra and rather

surreal dimension to the concept—which is defined of "author's 'widow'" (17 USC § 101).

The common law jurisdictions may be expected to treat the notion of "author" as an economic concept in preference to a creative one, but hitherto the civil law jurisdictions within the mainland of Europe have provided a counterbalance to unremitting pragmatism by treating "author" as a humanistic phenomenon. There are, however, signs that the common law approach has pervaded not only the open ground of European Community thought but also the bastions of French legal ideology.

In Europe, we read the words of Margret Möller<sup>3</sup> and repeat, without comment, her observation on the European Community's "Green Paper on Copyright and the Challenge of Technology":

The center of the Green Paper is not the author but the producer. The author's work is not so much an intellectual creation but a merchandise. It is not the authors' rights which have to be protected in the first instance but the producers' investments and the free circulation of those works within a common market has to be secured.

Ms Möller then cites Professor Schricker's dictum from ALAI's Munich Symposium of October 1988 that the Green Paper depicts "*un droit d'auteur sans auteur*." This charming phrase of course is meaningless in its English translation if *droit d'auteur* is rendered as "copyright." The phrase will soon be meaningless even in French, if *droit d'auteur* loses its *auteur*. Can this happen? Yes, if the French Law of July 3, 1985 on authors' rights and neighboring rights is anything to go by. Though its force is not universally agreed, the Law of July 3, 1985 would seem to have the effect of undermining authors' rights by denying to the author of computer software the natural right to assert the dignity of his creative act in respect of a particularly valuable author's work—the computer program. This development, viewed by most common lawyers with complete indifference, has been described by Bernard Edelman<sup>4</sup> in the following outspoken terms:

It innovates to the point where there is reason to fear that the 1957 Law [which protects authors' rights]...has in fact been radically denatured...The writer alone in his study, the artist at his easel, the composer poring over his score, all these risk being transformed into pale survivors of a bygone age.

...The Law of July 3, 1985 brutally dumps us into a cultural era where the creator becomes the indispensable yet secondary cog in an enterprise...of which he is no longer in control.

From this it can be seen that, for good or ill, the common law perspective of economic practicalities

<sup>3</sup> *Urheberrecht oder Copyright?*, Berlin, 1988.

<sup>4</sup> "Commentaire de la loi n° 85-660 du 3 juillet 1985 relative aux droits d'auteur et aux droits voisins," 1987, special number, *Actualité législative Dalloz*, 1-54 at p. 1; translation from David Saunders, "Bridging the Channel? It's Copyright in France but Moral Right in the UK," 1988, 1 *Copyright World*, pp. 21-22.

has, perhaps, been absorbed subconsciously into the collective copyright psyche of Brussels and that national laws of traditionally "author-oriented" States are no longer being founded upon their philosophical bases.

### *Conclusions*

Does it actually matter whether the term "author" is used to describe the creator of authors' works alone? If legal rights are adequately protected, is this discussion of terminology of any significance at all? The answer, it is submitted, is "yes."

In the first place the international dimension of copyright protection depends for its efficacy upon the national copyright regimes of different nations being harmonious with each other. Where a right which in one country vests initially in someone entirely different from the author is regarded in the United Kingdom as vesting in the author, it is quite possible that a copyright owner seeking to avail himself of the laws of a country other than his own will be confused, if not actually disadvantaged. It should also be recognized that the common use of commonly understood terms and concepts enables people to communicate with each other more effectively. Despite the fact that, for over two centuries, Britons and their cultural heirs have talked of "copyright," while their civil law counterparts have talked of "author's right," it has still been possible for meaningful dialogue to take place because each side in discussion has known that what is meant, on

the one side, by "copyright" and what is meant, on the other, by "author's right" are different things. In these discussions we have been aided by the fact that we have a certain shared conceptual vocabulary. When an Englishman talks of "literary work," his French or German colleague may require translation of the words, but he will still understand the idea behind them. The same has hitherto been true of "author." Now it is not, despite the fact that the words "author" and "*auteur*" are sufficiently similar.

The repercussions of this change of concept go further. An Englishman no longer shares the concept of "author" with his common law cousins in the United States, Canada, Australia, India or elsewhere. To him the word has wide connotations, while to them it is more precise in its ambit.

Further, the loss of the exclusive use of the term "author" as a means of reference to the human creator of an "author's work" means that, when the English lawyer uses the term "author," he is referring to a category which makes no differentiation between the creator of the work, his licensees and assignees and his potential infringers. All are now "authors"—the song-writer, the company which records his song, the film magnate who arranges for its incorporation into a movie sound track, the publisher of the sheet music for the song, the faceless organization which pipes the film to cable program subscribers and even the company which broadcasts it. It will be interesting to see how authors' groups will respond to this dilution of a term to which, hitherto, they believed they had the exclusive right.

## Correspondence

### Letter from the United Kingdom

Denis de FREITAS\*

#### Introduction

Since the last "Letters from the United Kingdom" were written in January 1984 and November 1985,<sup>1</sup> there have been major developments in the field of copyright in the United Kingdom. The "Letter" of January 1984 mentioned the public debate then taking place on the Government's consultative document on copyright law reform. The five years which have passed since that "Letter" have seen the completion of that review process culminating, in November 1988, with the enactment of the Copyright, Designs and Patents Act 1988<sup>2</sup> which contains a comprehensive new law introducing new provisions and concepts and making a number of changes in existing law.<sup>3</sup> The greater part of this "Letter" will be devoted to presenting a summary of the new law relating to copyright and performance rights. Also during the last four years, there have been a number of judicial decisions affecting the rights of authors and performers, and the more important of these are reported on below. The 1984 "Letter" also contained a brief account of the bringing into force of the public lending right scheme in the United Kingdom; since then, the scheme has been modified in various respects and a brief account of its present basis and scale of operation is included in this "Letter."

#### I. Legislation

##### *The Copyright, Designs and Patents Act 1988*

This Act will repeal and completely replace the Copyright Act 1956, as amended. As its title indicates, the 1988 Act contains provisions relating to designs and patents as well as to copyright; it also contains a new code of performers' rights, and in consequence, repeals the Performers' Protection Acts 1958-1972. This article deals only with the provisions relating to copyright and performers' rights, which are contained in Parts I and II of the Act, occupying 212 sections, and in Schedules 1 and 2 containing over 60 paragraphs; and in various miscellaneous and general provisions in Part VII. The new law is, therefore, very much longer than the existing law and an article such as this must necessarily be selective.

##### *General Comments*

Save in two instances, the drafting of the new law is, in general, a marked improvement on the 1956 Act; by and large it is expressed in clear and direct terms; it opens with this sentence of admirable clarity—

Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—

The two exceptions are Chapters IV and VII (dealing with moral rights and with the jurisdiction of the Copyright Tribunal). Both Chapters seem complex and may need judicial consideration before their full implications are established.

Sections 179 and 212 contain useful indexes of all defined expressions, with references to the sections containing the definitions.

\* Chairman of the British Copyright Council.

<sup>1</sup> See *Copyright*, 1984, pp. 19 to 29, and 1985, pp. 380 to 388.

<sup>2</sup> *Ibid.*, insert *Laws and Treaties*, October, November & December 1989, text 4-01.

<sup>3</sup> This article was written before the Copyright, Designs and Patents Act 1988 entered into force. Therefore, any reference to the existing or present law should be considered a reference to the law existing before the entry into force of the 1988 Act, and any reference to the new law should be considered a reference to the law under the 1988 Act.

## PART I—COPYRIGHT

Part I is declared as restating and amending the law of copyright with an express statement that a change in the existing law is not to be inferred merely because there is a change of expression in the new law (section 172).

*Chapter I.—Subsistence, Ownership and Duration of Copyright*

In the new law everything entitled to protection is described as "a work"; so that the distinction in the 1956 Act between sound recordings, cinematograph films, broadcasts, cable programs and typographical arrangements as "other subject matter" on the one hand, and literary, dramatic, musical and artistic works on the other hand, has been dropped; thus rationalising what has been, so far as English statute law is concerned, nothing more than a semantic distinction. Under the new law the descriptions of works which are eligible for copyright protection are put in the following three groups—

- (a) literary, dramatic, musical or artistic works,
- (b) sound recordings, films, broadcasts or cable programs,
- (c) the typographical arrangement of published editions (section 1(1)).

The rationale of the groupings is presumably that, as in the 1956 Act, the requirement of "originality" only applies to works in group (a) thus necessitating a separate grouping for those in (b); while typographical arrangements are put in a special group because of their somewhat special nature.

The new Act retains the approach adopted by the Copyright (Computer Software) Amendment Act 1985 of treating computer programs as literary works. The new Act defines a literary work as including a computer program (section 3(1)(b)); whereas the 1985 Act declared that the 1956 Act applied in relation to computer programs in the same way as it did to literary works; which is a somewhat different drafting formula but which the Government regarded as having the same effect. One consequence of this treatment is that the international obligations of the United Kingdom as a member State of the Berne Convention and the Universal Copyright Convention (UCC) to give national treatment to works originating in all other member States will apply to computer software so that, for example, computer software originating in the United States of America (which has been a member of the UCC since 1955 and which became a member of the Berne Convention on March 1, 1989) will automatically be protected under the 1988 Act.

There is a new definition of "photograph" as meaning—

...a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film...(section 4(2))

There is a new definition of "sound recording" as meaning—

- (a) a recording of sounds, from which the sounds may be reproduced, or
- (b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced...(section 5(1))

This new definition introduces several changes from the 1956 definition. First, it appears to make a distinction between a sound recording of natural sounds, for example bird song or a hurricane, and a recording of works which are themselves categories of protected works; although the distinction does not appear to have any particular legal significance. Secondly, the definition seeks to take account of the inevitability of continuing technological advances and recognizes that recordings may be made on media yet to be invented. Thirdly, the definition does not retain the provision in the 1956 definition which excludes the sound-track of a cinematograph film. Under the 1988 definition the music in the sound-track of a film is a sound recording in which copyright will subsist separate and distinct from the copyright in the film as a whole. It also means that in a music video for example, there will be two copyrights—one in the recording of the music and the other in the recording of the visual images.

There is a new definition of "a broadcast" which takes account of the latest developments in transmission via satellite, including the use of encrypted signals, whereby members of the public may receive programs transmitted via satellite directly rather than through onward transmission from a ground receiving station (section 6). The definition gives rise to a number of questions which space does not permit to be examined in this article; but attention is briefly drawn to the following important considerations.

To be within the definition of "broadcast" a transmission must be "capable of being lawfully received by members of the public." This appears to mean that a transmission specifically directed at the audience in a country where the public is by law prohibited from listening to such transmissions, would not be a broadcast for the purposes of the Act. However, as the term "public" is not limited to any particular country, if such a transmission could be lawfully received by members of the public in some other country, then the transmission as a whole would appear to be within the definition of "broadcast."



Another possible problem may arise out of the provision in subsection (3) which specifies who is to be regarded as the person responsible for making a broadcast. Under this provision, an enterprise based in a foreign country e.g. Switzerland, which produced or procured programs and made the arrangements for their transmission by a company operating transmitting equipment in the United Kingdom would be the person responsible; but, of course, would be outside the jurisdiction of the Act; but the person actually operating the transmitting equipment, and hence within the jurisdiction, would have no liability because he has no responsibility for the contents of the programs transmitted. Although some difficult questions may arise from this definition, it is undoubtedly an improvement on the 1956 provisions (as modified by the Cable and Broadcasting Act 1984).

There is a new set of definitions relating to cable programs and cable program services which are somewhat shorter and clearer than the original set of provisions introduced by the Cable and Broadcasting Act 1984. However, the new provisions still retain the previous approach i.e. to define the restricted act of using a work in a cable program service by reference to the question whether the cable service itself is licensed or licensable under the legislation regulating such services.

There are two features of the provisions relating to authorship which deserve special mention. First, the Act does not retain a special definition of "author" in relation to photographs (as contained in section 48(1) of the 1956 Act). Under the new law the author of the photograph is simply the person who creates it.

The second noteworthy feature is the appearance of the concept of "a literary, dramatic, musical or artistic work which is computer-generated." Such a work is defined as meaning one which is generated by computer in circumstances such that there is no human author of the work, and for such a work the author is to be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken (sections 178 and 9(3)). This is an innovative provision, probably not to be found in the copyright law of any other country—at least at present. The notion of a work entitled to be protected by copyright, of which there is no human author, is one which will probably give rise to much discussion in years to come.

The provisions relating to the ownership of copyright have been much simplified, for the benefit of the individual author. The only case where the copyright in a literary, dramatic, musical, or artistic work does not initially vest in the author is where the work is made by an employee in the course of his employment, in which case the employer is the first owner of the copyright, unless there is some

agreement to the contrary (section 11).

Two important changes have been made with respect to the duration of copyright. First, the special provisions in section 2(3) of the 1956 Act whereby the copyright in literary, dramatic, and musical works which had not been released to the public before the author's death would continue to subsist until the expiry of 50 years after the first act of release, have not been retained. The copyright in such a work will expire, as in the case of works first released prior to the author's death, 50 years after his death. The other important change is that the special provision in section 3(4) of the 1956 Act relating to engravings and photographs has not been retained; in both these cases the general rule that copyright expires at the end of 50 years following the year in which the author died will apply.

### *Chapter II—Rights of Copyright Owner*

Section 16 provides that the copyright in a work is the exclusive right to do the following acts in the United Kingdom—

- (a) to copy the work,
  - (b) to issue copies of the work to the public,
  - (c) to perform, show or play the work in public,
  - (d) to broadcast the work or include it in a cable program service,
  - (e) to make an adaptation of the work or do any of these acts in relation to an adaptation,
- but all these restricted acts are not necessarily comprised in the copyright in all the categories of protected works.

It is to be noted that the copyright provisions of the Act apply to things done on a British ship, aircraft or hovercraft as they apply to things done in the United Kingdom itself; as well as to things done in territorial waters and in the U.K. sector of the continental shelf (sections 161 and 162).

Sections 16 to 21 contain a number of rules about the restricted acts. The language used, and the arrangement of the provisions, differ from the corresponding provisions in the 1956 Act and in a number of cases the law has been changed. Thus—

(i) The rule in the existing law that a restricted act done in relation to a substantial part of a work is an infringement of the copyright in the work is expressly restated, but it is supplemented by a rule that an infringement also takes place if a restricted act is done either directly or indirectly in relation to a work and that it is immaterial whether any intervening acts themselves infringe copyright (whether in the work in question or any other work). These are new statutory provisions and it remains to be seen whether in fact they create any change in the law (section 16(3)).

(ii) Copying in relation to a literary, dramatic, musical or artistic work is expressly declared to

include storing such a work in any medium by electronic means (section 17(2)).

(iii) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work (section 17(6)).

(iv) The issue to the public of copies of a work (corresponding to the publishing of a work under the 1956 Act) is expressly declared to refer to the first such issue. In other words, once this particular restricted act takes place, either in the United Kingdom or elsewhere, it is exhausted and the copyright owner's right of control over this kind of use may no longer be exercised; subject, however, that in the case of sound recordings, films and computer programs the restricted act of issuing copies to the public includes the rental of copies, and is not an exhausted right but a continuing right. It is to be noted that there is no corresponding rental right in any literary, dramatic, musical or artistic works which may be incorporated in the sound recording or film (section 18).

(v) The copyright in the typographical arrangement of a published edition includes not only the right to copy the work (which is the case under the 1956 Act) but also the right to issue copies of the work to the public (which is not the case under the 1956 Act) (sections 17(1) and 18(1)).

Sections 22 to 27 deal with the acts which amount to secondary infringements of copyright; these provisions appear to reproduce the effect of the corresponding provisions in the 1956 Act; but there are some new provisions—

(i) A person who without the permission of the copyright owner transmits a work by means of a telecommunications system (otherwise than by broadcasting or a cable program service) commits an infringement if he knows or has reason to believe that infringing copies would be made by means of the reception, whether the reception takes place in the United Kingdom or elsewhere (section 24(2)).

(ii) A person who supplies a copy of a sound recording or a film which is used to infringe copyright is himself liable for the infringement if he knew or had reason to believe that it would be used for that purpose. This would appear to be directly aimed at the case of, for example, the cinema projectionist who lends a copy of a film on first release to a friend at the end of the first night's show knowing that it would be reproduced by using modern high speed reproduction equipment before being returned next day (section 26(4)).

(iii) An infringing copy is defined as including a copy of a work imported or proposed to be imported into the United Kingdom which, if made in the United Kingdom, would have constituted an

infringement of the copyright in the work or would have been a breach of an exclusive licensing agreement (section 27(3)). This changes the existing law as determined by the High Court (in *CBS (U.K.) Ltd v. Charmdale Record Distributors Ltd* 1979).

### Chapter III—Exceptions

This Chapter contains a long list of exceptions to the copyright owners' right of control; and there are many changes in the law made by these provisions. What follows is only a selection—

(i) The fair dealing exception for the purposes of research or private study has been amplified in several ways—

(a) It now applies to typographical arrangements of published editions (which it does not under the 1956 Act) (section 29(2)).

(b) There is an express provision excluding from the fair dealing exception any copying done by a librarian or someone acting on behalf of a librarian, for a student or researcher if it does not comply with the provisions and regulations governing the making of copies by librarians of prescribed libraries (sections 38, 39 and 40).

(c) Copying, when done by someone other than the researcher or student, is not fair dealing if it will result in copies of the same material being provided to more than one person at the same time and for the same purpose (section 29(3)(h)).

It should be noted that in the Bill, as introduced into Parliament, "research" was defined so as expressly to exclude "commercial research." However, in response to representations from the industry lobby, the Government withdrew that exclusion.

(ii) In the absence of a licensing scheme certified by the Secretary of State, the recording of broadcasts or cable programs, or copies of such recordings, may be made by educational establishments for their educational purposes without infringing the copyright in the broadcast, the cable program, or any work included in them (section 35).

(iii) Reprographic copies of passages in published literary, dramatic or musical works may be made by educational establishments for the purposes of instruction without infringing the copyright in either the work itself, or in the typographical arrangement, provided, however, that—

(a) not more than one per cent of any one work may be copied in any quarter (the quarters run from January, April, July and October);

(b) no such copying is authorized if licenses are available covering the copying sought

to be done; but in this case the license may not restrict the copying to any extent which exceeds that which the section permits. It is not clear whether this means that a license must permit the one per cent copying but may make some charge for it (section 36).

(iv) There are a series of exceptions in respect of various activities of public administration; thus copyright is not infringed by anything done for the purposes of—

- (a) parliamentary or judicial proceedings;
- (b) royal commissions or statutory inquiries; or
- (c) copying a literary work which is open to public inspection pursuant to a statutory requirement or which is on a statutory register; or copying by the Crown of literary, dramatic, musical or artistic works which have been communicated to the Crown, if the copying is for any purpose reasonably anticipated by the copyright owner when the work was communicated to the Crown (sections 45, 46, 47 and 48).

(v) Where the purchaser of a copy of a work in electronic form transfers the copy to someone else, the transferee may himself do anything which the purchaser could have done unless there is an express term in the original sale contract

- (a) prohibiting the transfer of the copy, or prohibiting the assignment of any license; or
- (b) imposing terms governing the right of the transferee to do the things which the original purchaser could do (section 56).

(vi) In the absence of a licensing scheme certified by the Secretary of State covering the rental of sound recordings, films or computer programs, the Secretary of State has power to impose, by order, a statutory license covering the rental of such works (section 66).

(vii) The British Broadcasting Corporation (BBC), the Independent Broadcasting Authority and the Cable Authority may, for the purpose of maintaining supervision and control over their broadcasting and program distribution operations, make recordings of any material which is broadcast or distributed, without infringing any copyright (section 69).

(viii) Home taping of a broadcast or a cable program solely for time-shifting purposes does not infringe any copyright in the broadcast or the cable program or in any work included in them (section 70). This provision emerged out of the parliamentary debate on the general home recording problem. The Government initially decided to take no action whatever i.e. not to implement the proposals it had made in the 1986 White Paper to intro-

duce a system of statutory royalties related to the sale of blank tapes. The Government, however, modified its view and, by introducing this provision, regularized this particular category of home taping. All other home taping which is unauthorized will continue to be infringing activity. Of course, it remains to be seen whether in practice it will be possible to distinguish between the recording of a program "for the purpose of enabling it to be viewed or listened to at a more convenient time" and recordings made for other purposes.

#### *Chapter IV—Moral Rights*

Save for the provisions relating to the false attribution of a work (corresponding to section 44 of the 1956 Act) the provisions in this Chapter are entirely new, as hitherto moral rights were not expressed in statutory form in the law of the United Kingdom. By comparison with the relevant provisions in the Berne Convention, and the provisions in other European copyright laws, the provisions in this Chapter are extremely long and complicated.

There are two moral rights—

(i) The right of the author of a literary, dramatic, musical or artistic work and of the director of a film to be identified as the author or director in certain circumstances specified in this Chapter (section 77).

(ii) The right of the author of a literary, dramatic, musical or artistic work and of the director of a film not to have their work subjected to derogatory treatment, which means treatment amounting to distortion or mutilation of the work or which is otherwise prejudicial to the honor or reputation of the author or director (section 80).

In the following summary the first right is referred to as the right of paternity and the second as the right of integrity. Each of these rights is governed by a separate set of rules.

#### *The Right of Paternity*

The circumstances in which the right of paternity may be claimed vary depending upon the category of the work; but, in general, it may be said that the right arises whenever the work is published commercially or otherwise presented or released to the public. The principal rules governing the exercise of the right may be summarized as follows—

(i) Unless the author or director has specified a particular form of identification, such as a pseudonym, any reasonable form may be used (section 77(8)).

(ii) The right does not arise in the following cases—

- (a) in relation to computer programs, typeface designs or computer-generated works (section 79(2));

- (b) where the initial ownership of the copyright has vested in a person other than the author or the director, e.g. when it vests in the author's employer (section 79(3));
  - (c) in relation to an act which does not amount to an infringement of copyright by virtue of various exceptions contained in sections 30, 31, 32(3), 45, 46, 51, 52 and 57 (section 79(4));
  - (d) in relation to a work made for the purpose of reporting current events (section 79(5));
  - (e) in relation to publication in a newspaper, magazine or similar periodical, or an encyclopaedia, dictionary, yearbook or other collective work of reference when the work was either made, or made available, for the purposes of such publication by or with the consent of the author (section 79(6));
  - (f) in relation to works in which Crown or Parliamentary copyright subsists or in which copyright initially was vested in an international organization (section 79(7)).
- (iii) The right may not be enforced unless it has been asserted. Assertion may be effected—
- (a) by a statement in an assignment of the copyright in the work;
  - (b) by any instrument in writing signed by the author or the director;
  - (c) in the case of an artistic work by the identification of the author on the work or a copy of it or on anything to which the work is attached, such as a frame or mount;
  - (d) also in the case of an artistic work, by a statement of assertion in a license covering the making of copies of the work (section 78).

### *The Right of Integrity*

As with the right of paternity, the circumstances in which this right arises vary depending on the category of work; but, generally, this right also arises whenever the work is published commercially or presented to, or released to, the public. The principal rules governing the exercise of the right may be summarized as follows—

- (i) The right does not apply to a computer program or to a computer-generated work (section 81(2)).
- (ii) The right does not apply in relation to—
  - (a) any work made for the purpose of reporting current events (section 81(3));
  - (b) any work published in a newspaper or a magazine or similar periodical, or in an

encyclopaedia, dictionary, yearbook or other collective work of reference if the work was made or made available, for such publication, with the consent of the author (section 81(4));

- (c) any work in which copyright originally vested in the author's or director's employer by virtue of sections 11(2) and 9(2)(a), works in which Crown or Parliamentary copyright subsists, or in which the copyright originally vested in an international organization, unless
  - (aa) the author or director has been identified, and
  - (bb) there has not been a disclaimer of the right (section 82).

There is no definition of disclaimer; presumably it is the same as a waiver.

(iii) The right does not arise in relation to an act which would not be an infringement in the copyright of the work by virtue of section 57 (dealing with assumptions as to expiry of copyright or death of the author in pseudonymous and anonymous works) (section 81(5)).

(iv) The right may not be invoked in relation to any act done for the purpose of—

- (a) avoiding the commission of an offense;
- (b) complying with a statutory duty;
- (c) the avoidance by the BBC of the broadcasting of anything which might offend good taste or decency, or which might be likely to encourage or incite to crime, disorder or to be offensive to public feeling (section 81(6)).

There is also a secondary infringement of this right when a person possesses for purposes of trade, or actually trades in, or distributes in a way which prejudices the honor or reputation of the author, a work or a copy of it which infringes the right (section 83).

The Chapter also contains a special provision, unrelated to moral rights, protecting the privacy of the person who commissions a photograph or a film for private and domestic purposes. Where copyright subsists in such a photograph or film the person who commissioned it has a right not to have

- (a) copies issued to the public,
- (b) the work exhibited in public, or
- (c) the work broadcast or included in a cable program (section 85).

### *Duration of Moral Right*

The rights of paternity and integrity, and the special right to the privacy of certain photographs and films, subsist throughout the duration of copyright in the works (section 86).

### *Consent and Waiver*

The person entitled to either the moral rights or the special right of privacy may consent to the doing of any act which would otherwise infringe those rights; but the rights themselves may not be assigned.

Any of these rights may be waived either generally or by reference to specific works and either conditionally or unconditionally. Instruments of waiver must be in writing (section 87).

### *Chapter VI—Remedies for Infringement*

Much of this Chapter reproduces, in its effect, provisions in Part III of the 1956 Act; but there are a number of changes.

The normal right of the copyright owner, who successfully establishes that his rights have been infringed, to obtain an injunction, an order for delivery up, or damages or an account of profits is overridden in any case where a license is available as of right by virtue of the exercise of powers conferred on the Minister to cancel or modify license terms and provide that a license may be available as of right on different terms following a report of the Monopolies and Mergers Commission that the original license conditions operate against the public interest. In such a case—

- (a) no injunction may be granted,
- (b) no order for delivery up may be made under section 99,
- (c) damages, or payment on account of profits, are limited to double the amount which would have been payable under the license as of right (sections 98 and 144).

A copyright owner may, without instituting an infringement action, apply to the High Court for an order for delivery up of infringing copies of his work in the possession of a third party (section 99). Where a copyright owner finds infringing copies of his work exposed or otherwise available for sale or hire in circumstances which would justify his applying for an order of delivery up under section 99, he may seize them, subject to certain safeguards. Advance notice of the proposed seizure must be given to the police; only premises to which the public have access may be entered; and force may not be used (section 100).

Sections 101 and 102 appear to reproduce the effect of section 19 in the 1956 Act regarding infringement actions involving exclusive licenses; save that there is a new consequential provision requiring the copyright owner to notify the exclusive licensee before applying for an order for delivery up under section 99 or exercising his right of seizure under section 100 (section 102(5)).

The new provisions regarding presumptions in copyright proceedings make significant changes in the law. Thus—

- (a) There is no provision corresponding to section 20(1) of the 1956 Act regarding the presumption of subsistence of copyright.
- (b) Under the 1956 Act there are no presumptions in the case of films, but under the new law there are presumptions as to the author or director, the owner of copyright and the date and place of first publication (section 105(2) and (5)).
- (c) Although computer programs are defined as included in the term "literary work" (section 3(1)) with the consequence that the presumptions relating to literary, dramatic, musical and artistic works in section 104 (corresponding to section 20(2) to (6) of the 1956 Act) will apply, there is a special presumption regarding the owner of the copyright in a program and its date and place of first issue to the public, which is available when copies of a program are issued in electronic form (section 105(3)).
- (d) There is a presumption regarding the date of the first commercial publication of a literary, dramatic or musical work in which Crown copyright subsists (section 106).

These presumptions apply in civil proceedings only, and not in proceedings for offenses (subject to one exception mentioned below).

Section 198 contains provisions relating to offenses of making or dealing with infringing articles or articles specifically designed for making infringing copies, and to unauthorized public performances, which correspond to section 21 of the 1956 Act; but they introduce an important change. The offenses under the 1956 Act only take place if the defendant knows that his action would infringe copyright, whereas under the new law he is guilty if "he knew or had reason to believe that copyright would be infringed."

Orders for delivery up of infringing copies or articles either to the copyright owner or to other persons, may be made in proceedings for offenses under section 107; this is the only case where the presumptions in sections 104 to 106 may be invoked in criminal proceedings (section 108).

Under section 110 the officers of a body corporate which has committed an offense under section 107 are themselves guilty of the offense and liable to be proceeded against.

Section 111 corresponds to the provisions in section 22 of the 1956 Act which deal with the power to prohibit the importation of infringing copies of published literary, dramatic and musical works by giving notice to the Commissioners of Customs and Excise. The new provision extends this procedure to sound recordings and films subject, however, in their case to the copyright owner giving advance

notice of the time and place when and where the infringing copies are expected to arrive in the United Kingdom, a requirement which in practice may not be easy to comply with.

Section 114 deals with the power of the court, in cases where infringing copies or articles have been delivered up under sections 99 or 108, or seized under section 100, to be forfeited to the copyright owner or otherwise dealt with as the court may think fit.

### *Chapter VII—Copyright Licensing*

This Chapter corresponds, in a general sense, to Part IV of the 1956 Act which established the Performing Right Tribunal and defined its jurisdiction and powers. The provisions in this Chapter are, however, very much more extensive in various ways; they confer a greatly increased jurisdiction on the Tribunal (renamed the Copyright Tribunal) and give the Secretary of State additional powers of supervision over, and regulation of, the licensing rights. Broadly speaking, this new regime of control will operate (if it operates at all) where rights are either licensed pursuant to a "licensing scheme" or are licensed by a "licensing body" (either under a licensing scheme or otherwise). The provisions in Chapter VII will not apply when rights are licensed by an individual copyright owner, who might be the author himself or any successor in title; provided, however, the copyright owner does not fall within the extended meaning given to "licensing body."

The meanings of the two terms "licensing scheme" and "licensing body" are, therefore, central to an understanding of the effects of this Chapter. A "licensing scheme" is defined as—

...a scheme setting out—

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant copyright licences, and
- (b) the terms on which licences would be granted in those classes of case;

and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name (section 116(1)).

A "licensing scheme" is not a license; it is simply a statement promulgated by a person or body that is in a position to issue licenses specifying the cases in which it is prepared to grant licenses, and the terms which would be included in those licenses. The various tariffs of the Performing Right Society (published in its Annual Year Book) are examples of licensing schemes.

A "licensing body" is defined as meaning—

...a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of copyright licences, and whose objects include the granting of licences covering works of more than one author (section 116(2)).

A copyright license means a license to do, or authorize the doing of, any of the acts restricted by copyright.

### *Licenses or licensing schemes*

...covering works of more than one author do not include licences or schemes covering only—

- (a) a single collective work or collective works of which the authors are the same, or
- (b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies (section 116(4)).

It is to be noted that—

(i) A licensing scheme may be operated by a person who is not a licensing body. Thus, a popular playwright who chooses to administer his own rights of copyright may publish the terms on which he is prepared to license performances of his plays in various situations, one set of terms applying to performances in village halls, another to performances for charitable purposes, another to performances in theaters in the provinces and a fourth set of terms applicable to West End theater productions.

(ii) A person or enterprise may be a licensing body even if it is not engaged in collective administration as normally understood. Thus, an individual music publisher who administers reproduction rights on behalf of more than one composer and is prepared to grant licenses covering all such rights within its catalog would be a licensing body; as would be a book publisher who is prepared to grant photocopying licenses covering two or more of his authors.

These considerations and their implications raise questions of the compatibility of some of the provisions in this Chapter with the relevant intellectual property conventions to which the United Kingdom belongs; but space does not permit their examination in this article.

### *The Tribunal's Jurisdiction Over Licensing Schemes*

Sections 118 to 123 give the Copyright Tribunal jurisdiction over certain disputes relating to certain licensing schemes (see following paragraph). The disputes which may be referred to the Tribunal are—

(i) a dispute over the terms of a licensing scheme proposed to be operated by a licensing body (section 118);

(ii) a dispute over the terms of a licensing scheme which is already in operation irrespective of whether or not the operator of the scheme is a licensing body (section 119);

(iii) a dispute with respect to a licensing scheme which has already been the subject of an order by the Tribunal pursuant to a reference under either section 118 or 119 i.e. a power to cause the Tribu-

nal to review an order (subject to safeguards regarding time limits) (section 120);

(iv) a dispute with respect to a person who claims to be covered by a licensing scheme but complains that the operator of the scheme (who may or may not be a licensing body) has refused to grant him a license or has offered one on unreasonable terms (section 121);

(v) a dispute between a person and the operator of a scheme with respect to an order made under section 121 i.e. a request for a review of a Tribunal decision (subject to safeguards regarding time limits) (section 122).

Not all licensing schemes are subject to the foregoing jurisdiction; only disputes with regard to certain licensing schemes may be referred to the Tribunal; the vulnerable licensing schemes are—

(i) In the case of literary, dramatic, musical or artistic works or films (including a sound-track accompanying a film) all licensing schemes *operated by licensing bodies* which relate to licenses for the following rights—

- (a) to copy such works,
- (b) to perform, play or show such works in public, or
- (c) to broadcast or to include such works in a cable program service.

(ii) In the case of sound recordings (other than a film sound-track accompanying a film), broadcasts, cable programs or typographical arrangements of a published edition, all licensing schemes (*whether or not operated by a licensing body*) which relate to licenses covering any of the restricted acts comprised within the copyright subsisting in any of these descriptions of works.

(iii) In the case of sound recordings, films and computer programs, all licensing schemes (*whether or not operated by a licensing body*), which relate to licenses for the rental of copies to the public.

The distinction between category (i), where the licensing schemes may only be referred to the Tribunal if they are operated by licensing bodies, and categories (ii) and (iii), where all licensing schemes are referable, is presumably due to considerations relating to the obligations under the Berne Convention. Subject to certain qualifications, the rights prescribed by the Berne Convention are expressed as the exclusive rights of the author. The statutory power of a tribunal to override those rights would therefore, *prima facie*, be a breach of the Convention. However, in 1948, when the Brussels text of the Convention was established, the United Kingdom made an express reservation of its right to take measures to deal with abuses of monopoly power—understood to mean cases where a particular right is administered by a monopoly body. The rights in categories (ii) and (iii) are not covered by

the Berne Convention and so this consideration does not arise. It should be mentioned, however, that there is an opinion that one of the conventions which apply to the rights in categories (ii) and (iii)—the Rome Convention, 1961—gives rise to similar considerations.

### *The Tribunal's Jurisdiction Over Licenses From Licensing Bodies*

Sections 125 to 128 confer jurisdiction on the Copyright Tribunal with respect to disputes concerning licenses proposed, granted or withheld by a licensing body, *but not pursuant to a licensing scheme*, in the same cases as described above in relation to disputes concerning licensing schemes. Perhaps the best example of such a case would be a license or proposed license from the Performing Right Society (PRS) to the BBC authorizing the latter to broadcast the musical works controlled by the PRS. The BBC is a unique organization providing on a non-commercial basis a wide range of radio and television broadcasting services; it does not belong to any class and consequently there can be no licensing scheme appropriate to it; hence, a dispute between the BBC and the PRS would fall within the Tribunal's jurisdiction conferred by sections 125 to 128.

### *The Tribunal's Jurisdiction—Factors Required To Be Taken Into Account*

Sections 129 to 134 specify various considerations which the tribunal must, in specific cases, take into account when exercising its jurisdiction. Thus—

(i) In any proceedings before the Tribunal relating to a licensing scheme or a license, the Tribunal, in determining what is reasonable, must have regard to—

- (a) any other scheme, or license, available or granted to persons in similar circumstances;
- (b) the terms of those schemes, or licenses; and, in exercising its powers, must ensure that there is no unreasonable discrimination between the licensing terms in dispute and other terms granted by the same licensor (section 129).

(ii) In proceedings relating to the licensing of the reprographic copying of published literary, dramatic, artistic works or typographical arrangements of published editions, the tribunal must have regard to—

- (a) the extent to which published editions of the works in question are otherwise available,
- (b) the proportion to be copied,
- (c) the nature of the use to which the copies are likely to be put (section 130).



(iii) In proceedings relating to licenses for recording, broadcasts for educational purposes, or cable programs containing copyright works, or making copies of such recordings, the Tribunal must have regard to the extent to which the copyright owners of the works have already received or are entitled to receive payment in respect of inclusion of the works in the programs (section 131).

(iv) In the case of licenses relating to sound recordings, films, broadcasts or cable programs which include an entertainment or other event, the Tribunal must have regard to any conditions imposed by the promoters of that entertainment or event, other than conditions relating to charges or payments to be made (section 132).

(v) In proceedings before the Tribunal relating to licenses for the rental of sound recordings, films or computer programs, the Tribunal must take into account any reasonable payment which the copyright owners of the recordings, films or programs are liable to make to the copyright owners of works included in those sound recordings, films or programs (section 133(1)).

(vi) In proceedings relating to the licensing of sound recordings, films, broadcasts or cable programs, the Tribunal must take into account any reasonable payments which the copyright owners of such work are liable to make in respect of performances included in such recordings, films, broadcasts or cable programs (section 133(2)).

(vii) In proceedings relating to licenses to include literary, dramatic, musical or artistic works or sound recordings or films in a broadcast or cable program service which is to be immediately re-broadcast or further transmitted by a cable program service, there are a set of rules governing what the Tribunal must, or must not, take into account for the purpose of determining charges to be made for such licenses (section 134).

#### *Licensing Schemes Covering Reprographic Copying Must Carry Indemnity*

Licensing schemes and licenses granted by licensing bodies, covering the reprographic copying of published literary, dramatic, musical or artistic works or the typographical arrangements of published editions which do not specify the works covered with such particularity as to enable licensees to determine whether a particular work is or is not covered by the scheme or license, are deemed to carry an implied indemnity in favor of the licensee against any liability incurred through infringing copyright by making copies of a work within the apparent scope of the license (section 136).

#### *Powers Exercisable by the Secretary of State*

Licensing schemes or licenses which are subject to the jurisdiction of the Tribunal under sections

118 to 123 and 125 to 128, as explained above, and which cover the making of reprographic copies of published literary, dramatic, musical or artistic works, or of typographical arrangements of published editions for purposes of educational instruction may, by order of the Secretary of State, be extended to cover works of a similar description if the Secretary of State considers the exclusion of such works from the scheme or license to be unreasonable.

Such orders may only be made after due notice to the various interests affected, and after they have had an opportunity to make written or oral representations. Such orders may subsequently be varied or discharged by the Secretary of State, subject to certain conditions; and the owner of the copyright in a work which is the subject of such an order may appeal against it to the Tribunal (sections 137 to 139).

If it appears to the Secretary of State that the licensing of the making of photographic copies of published literary, dramatic, musical or artistic works or the typographical arrangements of published editions of a particular description for the purposes of educational instruction is not covered by any existing licensing schemes or general license and does not fall within his power to extend existing schemes or licenses, he may appoint someone to hold an inquiry into the question of whether such a license is desirable.

If such a recommendation is made and within one year after its making no licensing scheme or general license is available, the Secretary of State may by order provide that the making of such copies is to be treated as licensed by the copyright owners i.e. he may, in effect, impose a free statutory license (sections 140 and 141).

In addition to the comprehensive powers of supervision, regulation and control exercisable by the Copyright Tribunal and the Secretary of State under this Chapter, section 144 enables the powers under the Fair Trading Act 1973 to be invoked so as to cancel or modify licensing conditions which, in the opinion of the Monopolies and Mergers Commission, may operate, or have operated, against the public interest; even if, apparently, those conditions are in licenses or licensing schemes already approved by the Copyright Tribunal. These powers may only be exercised if the Minister is satisfied that to do so would not contravene any convention relating to copyright to which the United Kingdom is a party.

#### *Chapter VIII—The Copyright Tribunal*

This Chapter provides that the Performing Right Tribunal established under the 1956 Act is renamed the Copyright Tribunal, and it contains pro-



visions regulating its membership, jurisdiction and procedure. The principal change from the corresponding provisions in the 1956 Act is that the Copyright Tribunal will now have two deputy chairmen and may sit in divisions of not less than three presided over either by the chairman or by one of the deputy chairmen.

#### *Chapter IX—Qualification for and Extent of Copyright Protection*

In general, the provisions in this Chapter reproduce the effect of sections 2(1) and (2), 31 to 35 of the 1956 Act relating to the qualifying conditions for copyright protection by reference to the nationality or residence of the author, the place of first publication and the extension of the law to other countries (both dependent and independent) and to international organizations. There is, however, one quite interesting change.

Section 153(3) declares:

If the qualification requirements of this Chapter, or section 163, 165 or 168, are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

This appears to mean that once copyright arises in a work by virtue of the fact that when it was made its author was a qualifying person e.g. a British citizen, it will not lose copyright protection if, while the work still remains unpublished, the author ceases to be a qualifying person, perhaps by becoming a citizen of a country which does not belong to a copyright convention, for example, the People's Republic of China, and the work is first published in that country. Although the point does not appear ever to have been tested in Court, under the existing law in such a situation the work, upon first publication in a non-qualifying country, would cease to be protected under the 1956 Act.

Section 154(1) corresponds to section 1(5)(a) of the 1956 Act, which defines "qualified person" and, somewhat surprisingly, does not change the law in a way which had been expected. Under the 1956 Act there is an anomalous situation in that, by virtue of the British Nationality Act 1981, nationals of Commonwealth countries are treated as "British subjects" and hence are automatically "qualified persons," with the consequence that all works of which they are authors are protected under U.K. law, even if the Commonwealth country in question does not itself extend the protection of its copyright law to works by British authors. It had been understood that this automatic protection of Commonwealth works would be discontinued.

#### *Chapter X—Miscellaneous and General Crown and Parliamentary Copyright*

Section 163 makes a general provision that the first owner of the copyright in a work made by Her

Majesty, or by an officer or servant of the Crown in the course of his duties, belongs to the Crown; but there is no provision corresponding to section 39(6) of the 1956 Act which permits contracting out. Section 164 expressly vests copyright in every Act of Parliament or measure of the General Synod of the Church of England in the Crown.

Works made by or under the direction or control of either House of Parliament are protected by copyright which belongs to the House in question (section 165). The protection of legislation, including parliamentary Bills, by copyright is unusual; most copyright laws exclude such items from copyright protection on the ground that it is in the public interest that the public should have the widest possible access to such documents without any restriction from, or dependence upon, the exercise of rights of copyright.

This Chapter also contains a number of general interpretation rules and definitions which should be studied before the effect of any of the provisions of the Act is examined.

#### *Part VII—Miscellaneous and General*

The four opening sections of this part of the Act (sections 296 to 299) deal exclusively with copyright. They have no counterpart in the 1956 Act and are directed specifically at certain aspects of the latest forms of technology which have an impact on the copyright system.

First: where copies of a protected work are issued to the public in an electronic form which is "copy protected" any person who makes or trades in or advertises any device specifically designed to circumvent the "copy protection," or who publishes information intended to help persons to circumvent the "copy protection," commits an infringement of the copyright in the work (section 296).

This provision is, of course, aimed at safeguarding the technological devices currently being developed which may be incorporated either in recording equipment, or in certain kinds of recordings (such as DAT), or in both the recording and the recorder, which will either prevent the making of further recordings or will limit the number of such recordings which may be made.

This provision is very innovative and, from the copyright owner's point of view, to be welcomed. However, by making the offending act an infringement, which means that it must be related to the copyright in a specific work, its usefulness may, in practice, be limited. It would probably have been much more effective to have treated it as an offence.

Second: a person who "dishonestly" receives a program either broadcast or distributed by cable,

which has been transmitted from the United Kingdom, with the intention of avoiding payment for the right to receive the program commits an offense. This provision is concerned with the new "Pay TV" technologies whereby programs are transmitted on the basis that they will only be received by persons who have legitimately acquired special equipment—either to decode encrypted signals or to meter programs actually received (section 297).

Third: persons who make programs intended for reception on payment, or who transmit encrypted programs, have the same rights as a copyright owner would have in respect of infringement, against persons who make, import or trade in equipment designed to enable persons to receive programs which they are not entitled to do, or who publishes information enabling or assisting persons to receive such programs (section 298).

Fourth: sections 297 and 298 may be applied, by Order in Council, to programs transmitted from countries outside the United Kingdom (section 299).

Finally, Schedule 1 to the Act contains a code of transitional provisions and savings. The Schedule is much better drafted than the corresponding code contained in Schedule 7 of the 1956 Act; but nevertheless its provisions are quite complicated and their effect needs to be separately studied. It is obviously essential that the Schedule be consulted in any case where after the commencement of the new Act a problem or dispute arises involving a pre-commencement factor—for example

- (a) the institution of legal proceedings after commencement in respect of acts which took place before commencement;
- (b) the ownership of rights in a work in existence before commencement where, after commencement, there are new provisions relating to authorship e.g. in the case of photographs;
- (c) the subsistence and enforceability of moral rights after commencement in works which were in existence before commencement;
- (d) the ownership of new rights e.g. rental rights, in works which were in existence before commencement and have been the subject of contracts made before commencement.

The foregoing instances are not intended to be comprehensive but simply indicative of the kind of questions which may involve the operation of the transitional rules.

## PART II—RIGHTS IN PERFORMANCES

This Part of the new Act deals with the rights of performers and other persons with interests in per-

formances; and it makes fundamental changes in the law. To best explain the full effect of these changes it may be helpful to summarize briefly the present position.

### *The Present Law*

The present law is contained in the Performers' Protection Acts 1958–1972 which are completely repealed by the new law. Those Acts implemented the obligations of the United Kingdom in respect of performers under the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention, established on October 26, 1961); much of the requirements of the Convention were in fact already met by the Dramatic and Musical Performers' Act 1925 which, with subsequent amendments, was consolidated into the Performers' Protection Acts 1958–1972.

The essential features of the present legislation are the following—

- (i) It protects only the interests of performers.
- (ii) Performers are defined as those who "act, sing, deliver, declaim, play in or otherwise perform literary, dramatic, musical or artistic works"; thus linking protection to performances of the works protected under Part I of the Copyright Act 1956.
- (iii) The protection granted is by way of penal provisions i.e. offenses which are committed by persons who carry out certain acts in relation to performances without the consent of the performer.

The offenses under the current law are the acts of recording a live performance, broadcasting it, transmitting it via a cable distribution system, or publicly performing it without consent of the performers; it is also an offense to use an unauthorized audio or audiovisual recording of a performance for the purpose of broadcasting, cable distribution or public performance, or trading in, such unauthorized recordings. The existing law does not, by its terms, give performers a right to bring civil proceedings; and until fairly recently it was not considered that the protection intended for them could be sought by means of civil proceedings of any kind. However, in *Rickless v. United Artists* (1987 1 All ER 6797; 1987 2 WLR 945; 1987 FSR 362) the Court of Appeal held that the penal prohibition against recording the performance of a performer without his consent (in this case the making of a new film consisting of discarded cuttings from an original Peter Sellers' film without his, or his legal representative's, consent) gave the performer an interest, which he, or his legal representatives after his death, could protect by a civil right of action.

### *The New Law—The Basic Changes*

The provisions of the new law change the existing legal position in the following way—

(i) The protection is given not only to performers, but to persons "having recording rights in relation to a performance"; such a person is defined as someone who has the benefit of an exclusive recording contract with a performer, or someone to whom the benefit of such a contract has been assigned. In practice, this will probably be a film or record producer who has an exclusive recording contract with his actors or performing artistes (section 180(1)).

(ii) The performances in respect of which the new protection will operate include not only dramatic and musical performances, and the reading or recitation of literary works, but the performance of a variety act or any similar presentation; so that the protection is no longer linked to the performance of the categories of works protected by copyright (section 180(2)).

(iii) The 1988 Act expressly gives performers and persons having recording rights civil rights of action; the rights themselves are not defined but it is declared that the rights of performers and such persons are infringed by persons who commit various acts without the necessary consent.

### *Performers' Rights*

The acts which infringe a performer's rights are—

- (a) making, otherwise than for private and domestic use, a recording of his performance, or
- (b) broadcasting the performance live, or including it in a cable distribution service, or
- (c) using an unauthorized recording to broadcast, distribute by cable or give a public performance of the performer's performance, or
- (d) importing into the United Kingdom, or the trading in, of a recording of a performance which is unauthorized.

without the performer's consent (sections 182 to 184).

Performers' rights only subsist in relation to a "qualifying performance." This is defined as a performance given by a qualifying individual or which takes place in a qualifying country; and a "qualifying individual" means a citizen, subject or resident of a qualifying country; "qualifying country" means the United Kingdom, any other member States of the European Economic Community or a country designated by an Order under section 208 as enjoying reciprocal protection under this part of the Act (sections 181 and 206).

### *Persons Who Have Recording Rights*

A person is only treated as a person having recording rights for the purposes of the Act if—

- (a) he is a party to an exclusive recording contract relating to the performance or is a person to whom the benefit of such a contract has been assigned and who, in either case, is a qualifying person; or
- (b) he is a person, in a case where the persons mentioned in (a) are not qualifying persons, who has been licensed to make recordings of the performance or to whom the benefit of such a license has been assigned, and who, in either case, is a qualifying person (section 185).

It is to be noted—

(i) that a performer will only enjoy rights in a "qualifying" performance i.e. if he is a qualifying individual or he gave his performance in a qualifying country; whereas a person having recording rights, provided he is himself a qualifying person, may exercise rights in relation to a performance even if the performance is not a qualifying performance; for example, if it is a performance by a non-qualifying performer or a performance which took place in a country which is not a qualifying country;

(ii) that the performer must be a qualifying individual, whereas a person having recording rights must be a qualifying person, which includes not only a qualifying individual but also a body corporate formed under the law of the United Kingdom or of another qualifying country and which has a substantial business activity in any qualifying country.

The acts which infringe the rights of a person having recording rights correspond to those which infringe the rights of the performer save that an act carried out with the consent of the performer is not an unauthorized act, even if the consent of the person having recording rights has not been obtained (sections 186 to 188).

### *Duration*

The rights which subsist under this Part of the Act in relation to a performance last until the end of 50 years after the year in which the performance took place (section 191).

### *Transmission of Rights*

The Act declares that the rights established by this Part are not assignable or transmissible save that—

- (a) a person entitled to performer's rights may by will specifically direct that some designated person may exercise the rights;

- (b) if there is no such direction, then the rights may be exercised by the personal representatives of the person entitled to the rights (section 192).

### *Remedies*

An infringement of any of the rights conferred by this Part is actionable as a breach of statutory duty (section 194). In addition to the normal remedies available in such an action, the following special remedies may be invoked—

(i) A person entitled to rights under this Part may apply to the Court for an order that any illicit recordings in the possession of someone in the course of business he delivered up (section 195).

(ii) Where a person entitled to rights under this Part finds illicit recordings exposed or otherwise available for sale or hire in circumstances which would justify his applying for an order of delivery up under section 195 he may seize them, subject to certain safeguards. Advance notice of the proposed seizure must be given to the police; only premises to which the public have access should be entered; and force may not be used (section 196).

A performance is illicit if—

- (a) in the case of the rights of a performer a recording of the whole or a substantial part of his performance is made, otherwise than for private purposes, without his consent;
- (b) in the case of a person having recording rights, the recording of the whole or a substantial part of the performance is made, otherwise than for private purposes, without that person's consent or the consent of the performer (section 197).

There are no special provisions governing civil proceedings in respect of a performance which is subject to an exclusive recording contract, where both the performer and the person having recording rights will each have rights of action, such as there are in sections 101 and 102 of Part I which regulate actions in cases where there is an exclusive license of a right of copyright.

### *Offences*

In addition to the right to bring civil proceedings, performers and persons having recording rights are also protected by a series of penal provisions similar to those in the present law. Thus—

(i) it is an offence for a person without sufficient consent to make or possess for trading purposes, or to trade in, or to import (otherwise than for private and domestic use) a recording which he knows or has reason to believe is an illicit recording (section 198(1));

(ii) it is an offence for a person without sufficient consent to show or play in public, or broadcast or include in a cable program service, a recording of a performance if he knows or has reason to believe that by doing so rights of a performer or a person having recording rights would be infringed (section 198(2)).

### *Application of Part II*

Part II applies to territorial waters of the United Kingdom, British ships, aircraft and hovercraft; it also applies to the continental shelf and to structures and vessels which are present there for purposes directly connected with the exploration of the seabed, or the exploitation of their natural resources. This corresponds to the extent of application of Part I relating to copyright (sections 209 and 210).

### *Exceptions*

Schedule 2 to the Act contains a long list of exceptions more or less corresponding to those contained in Chapter III of Part I relating to copyright (section 189).

The Copyright Tribunal is given a very limited jurisdiction with respect to performances. A person wishing to make a recording from an existing recording of a performance may apply to the Tribunal in the following situations—

- (a) where the identity or whereabouts of the performer cannot be ascertained by reasonable inquiry, or
- (b) where the performer unreasonably withholds his consent.

In determining whether or not to authorize the second recording, the Tribunal must take account of certain factors—

- (a) whether the recording from which the new recording is to be made was made with the performer's consent, and is lawfully under the control of the person proposing to make the new recording;
- (b) whether the making of the new recording would be consistent with the obligations of the parties to the arrangements under which the original recording was made; and the Tribunal may not authorize the new recording unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any of his legitimate interests (section 190).

### *Final Comment*

As with Chapter IV (relating to moral rights) and much of the provisions in Chapter VII (relating

to the jurisdiction of the Tribunal) in Part I, the provisions in Part II are substantially new and their full effect will only emerge in the course of time and after they have been considered by the Courts. One possible question which may arise is the relationship between the ruling of the Court of Appeal in the *Rickless* case and the rights of civil action conferred by the new law on performers and persons having recording rights. The new rights only last for 50 years from the date when the performance took place, whereas the right to bring civil proceedings to protect the interests which the penal provision of the current law are intended to protect (and are largely reproduced in the new law) as determined by the Court of Appeal, is not subject to a time limit; and the new law expressly declares that the rights conferred by it are independent of "any other right or obligation arising otherwise than under this Part" (section 180(4)(b)).

## II. Case Law

Up to 10 years ago the number of reported decisions in the United Kingdom dealing with copyright in a year were few; but in the last decade there has been a dramatic change as the subject is frequently before the courts. This section of the "Letter" does not, however, purport to present a full report on all this case law but simply mentions three cases, in all of which the decisions were given by the highest appellate court in the United Kingdom—the House of Lords—and in which there are points of rather special interest.

*British Leyland Motor Corp. Ltd. and Another v. Armstrong Patents Co. Ltd. and Another* 1985/86

The plaintiffs manufacture motor cars, and employ draughtsmen to produce designs and engineering drawings for each component. They also manufacture spare parts for their cars and use the designs and drawings for the components for the purpose of producing the spares. The market for motor car spare parts is very large; and many enterprises make spare parts for motor cars, including the models made by Leyland. The motor manufacturers, including Leyland, have always asserted that other manufacturers of spare parts for their cars require a copyright license because, without that permission, the making of a spare part would be an infringement of the copyright in the drawings produced by, and for, the manufacturer of the car, even if the maker of the spare part did not in fact have access to the drawings or use them in any way.

This assertion of copyright by the manufacturers was based on an express provision in the Copyright Act 1956 which is in the following terms—

Reproduction in the case of...an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it in to a two-dimensional form (section 48(1)).

In this case, the defendants made spare exhaust systems for Leyland cars and did this by "reverse engineering," i.e., copying the actual exhaust systems fitted by Leyland to their cars when first sold. No patent or design right existed or was claimed by Leyland in the designs for their exhaust system; they asserted simply that the drawings which had been prepared in the first instance for the exhaust systems were artistic works and by making a three-dimensional object, i.e., the spare exhaust system, the defendants were making a reproduction of the artistic work within the meaning of that term contained in section 48(1). The court of first instance and the Court of Appeal upheld the plaintiff's contention. The House of Lords, however, produced an original decision.

The House of Lords held that the drawings made for British Leyland for the purpose of manufacturing the exhaust systems fitted to their cars in the first instance were artistic works; that copyright subsisted in them; and that the making by Armstrong of spare exhaust systems by copying, through reverse engineering, the systems fitted to British Leyland's cars was reproduction within the meaning of that term in section 48(1), and as no permission had been obtained from the copyright owner it amounted to an infringement. The House of Lords, however, went on to declare that there was an overriding principle of United Kingdom jurisprudence which would prevent British Leyland from being allowed to enforce their copyright. The principle enunciated by the House of Lords is that a grantor cannot derogate from his grant and they applied it to the facts of the case in the following way.

When British Leyland, through its distribution and dealership network, sells a car, the purchaser must have the right to repair the car, and this would include the right to make and fit a new part to replace an original part which became defective; and if the purchaser under the grant from British Leyland has this right, he must be free to exercise the right not only by making and fitting the spare part himself but by using the services of other persons and that, in consequence, enterprises which made spare parts for purchasers of cars to use when exercising their right to repair their cars could not be restrained from providing this service by the assertion of rights of copyright.

One of the principal judgments delivered—by Lord Templeman—contained the following paragraph—

The car sold by BL can only be kept in repair by the replacement of the exhaust pipe which is not the subject of a patent. In these circumstances, in my opinion, BL are not entitled to assert

the copyright in their drawing of an exhaust pipe in order to defeat the right of the purchaser to repair his car. The exploitation of copyright law for purposes which were not intended has gone far enough. I see no reason to confer on a manufacturer the right in effect to dictate the terms on which an article sold by him is to be kept in repair and working order.

Many will think that the decision is broadly in the public interest, but nevertheless it introduces a new kind of general exception to rights of copyright for which there is no express statutory provision. It is, therefore, not surprising that an attempt was made to regularize the position when the Copyright, Designs and Patents Act 1988 was enacted. This Act contains various provisions relating to the protection of designs the full effect of which is still unclear. However, there are certain changes to the law which clearly have been made; thus—

(i) There is a provision in section 17(3) of the 1988 Act corresponding to the definition of "reproduction" in section 48(1) of the 1956 Act; but

(ii) this is subject to a specific provision that the copyright in a design document or in a model embodying a design is not infringed by the making of an article which corresponds to the design or which copies an article which has already been made from the design, unless the article made is itself an artistic work (section 51(1)); in other words, on the facts of the British Leyland case, the making of the spare exhaust systems will not now constitute an infringement of any copyright which might subsist in the drawings for those systems unless the exhaust system is itself an artistic work. "Artistic work" is itself defined as—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or
- (c) a work of artistic craftsmanship (section 4(1)).

It would not appear possible to contend that an exhaust system falls within this definition and therefore the effect of the decision of the House of Lords in the British Leyland case would now appear to be covered by statutory provision.

There is a new code in Parts III and IV of the 1988 Act dealing with the protection of designs and registered designs under which certain spare parts may enjoy protection. The scope and application of these provisions is the subject of some uncertainty and discussion, but it is unlikely that they will apply to an exhaust system.

#### *CBS Limited and Others v. Amstrad Consumer Electronics PLC and Another 1988*

This was an action between record producers on the one hand and, in effect, the electronic equipment industry on the other. Amstrad is a successful

manufacturer of high-speed recording equipment designed for sale to, and use by, the general public by which recordings may be made from other recordings or off air from received broadcast programs. Record companies, whose submissions were presented by the British Phonographic Industry (BPI) in this case, produce sound recordings on disks, tapes and on other carriers for sale to the public. The BPI argued that it was unlawful for Amstrad to make recording equipment which could be used by members of the public to copy recordings in which copyright subsists, or alternatively that Amstrad should be restrained from advertising their equipment in such a way as to encourage copying. On the other hand, Amstrad and Dixons (a chain of retail outlets) argued that they may lawfully make and sell to the public any recording equipment which human ingenuity may devise and may lawfully advertise the advantages of such equipment.

There was a single judgment given in this case—by Lord Templeman—in which all the other law lords hearing the appeal concurred. Although the action reflected a confrontation, and conflict of interest, between the electronic equipment manufacturing industry and the recording industry, Lord Templeman began by pointing to the considerable interdependence of the two industries, remarking—

Without the facilities provided by the electronic equipment industry, the entertainment industry could not provide entertainment in the home, and could not for example maintain orchestras which fill the air with 20th century cacophony or make gratifying profits from a recording of a group without a voice singing a song without a tune.

In his judgment, Lord Templeman severely criticized the advertisements and behavior of Amstrad. He referred to its "hypocritical and disingenuous forms of advertising"; and stated that—

Amstrad's advertisement was deplorable because Amstrad thereby flouted the rights of copyright owners. Amstrad's advertisement was cynical because Amstrad advertised the increased efficiency of a facility capable of being employed to breach the law.

Notwithstanding the structures, however, Lord Templeman unequivocally reached the following conclusions—

(i) Amstrad had not "authorized" any infringements of any particular sound recordings which took place through the use of its equipment; its advertisements made it clear that it could not grant permission; and that it had no control over the use of its equipment once it had been sold. "Amstrad conferred on the purchaser the power to copy but did not grant or purport to grant the right to copy."

(ii) Amstrad was not a joint infringer with those persons who used its machines unlawfully; Amstrad had no control over such use; a user could use the equipment lawfully or unlawfully; and Am-



strad had not acted in concert with the users in "a common design" to infringe copyright protected material.

(iii) Amstrad's advertisements and sales did not amount to incitement to commit a tort; they could not procure infringement, particularly infringement by a particular individual of a particular work.

Although these conclusions were unqualified, Lord Templeman nevertheless criticized the current legal position—

The present position is lamentable. Millions of breaches of the law must be committed by home copiers every year.... What-  
ever the reason for home copying, the beat of *Sergeant Pepper*  
and the soaring sounds of the *Miserere* from unlawful copies are  
more powerful than the law-abiding instincts or twinges of con-  
science. A law which is treated with such contempt should be  
amended or repealed.

Save for a new provision in the 1988 Act which permits the recording of copyright material in broadcast or cable programs for time-shifting purposes (section 70), the law has not been either amended or repealed. In a White Paper published in 1986, setting out its proposals for the new copyright law to replace the 1956 Act, the Government expressly proposed to introduce a levy on blank tape to deal with home taping. When the Bill to implement these proposals was finally introduced into Parliament in October 1987, the promised provisions to establish a levy scheme were omitted and despite vigorous lobbying from the copyright interests, the Government declined to introduce such provisions during the passage of the Bill through Parliament. The Government has therefore allowed the law to remain in the lamentable state described by the House of Lords.

*Attorney General v. The Observer Ltd. and Others, Attorney General v. Times Newspapers Ltd. and Another 1988*

These cases arose out of the publication of a book entitled *Spycatcher* written by Mr. Peter Wright, a retired member of the British security service, known as MI5, who was employed from 1955 to 1976 in a senior capacity in the counter-espionage branch of MI5. His book was based on his experience in the service of MI5 and on the information he obtained in that capacity. That information was described by one of the law lords as "knowledge of a great many matters of prime importance to the security of the country" (i.e., the United Kingdom). The book was to be published by Heinemann Publishers Pte Ltd., the Australian subsidiary of a well-known English publishing company, in Australia where Wright had resided since his retirement. The Government of the United Kingdom considered that publication of the book would be prejudicial to the security interests of the United Kingdom and brought proceedings in

Australia to prevent publication; the proceedings failed. By 1987, the book had been published in Australia, the United States, Canada, the Republic of Ireland and other countries and copies were freely available to the public. Prior to 1988, the United Kingdom Government had initiated various proceedings in the United Kingdom to prevent publication by a number of newspapers of serialized extracts from the book, and had obtained injunctions prohibiting such publication. The issue which finally came before the House of Lords in 1988 was whether those injunctions should be lifted, having regard to the fact that not only were copies of the book easily obtainable by United Kingdom residents from other countries but that the Government had, by then, decided not to take steps to prevent the importation of such copies. The legal issues upon which the case turned, and the decision by the House of Lords was given, were issues of confidentiality and not copyright. However, in the course of their decisions, several of the law lords made observations relating to the copyright status of the book in the particular circumstances surrounding its writing and publication. It is with these observations only that this report is concerned.

The three most important observations are the following—

(i) As it was not disputed that the subject matter of the book was information that the author had obtained during, and through, his employment by the Crown in an occupation of high confidentiality, and in view of the fact that the Court unanimously found that the writing and publication of the book constituted a flagrant breach of that duty of confidentiality, some of the law lords took the view that the copyright in the book was either vested in, or was held in trust by the author for, the Crown as his employer through whose employment he obtained the confidential information. This view rested not upon any statutory provision or general principle of copyright law, but on a general equitable doctrine of English law that "no man may profit from his own wrong."

(ii) The second observation was that because of the opinion, held by the Court (and indeed it is probably fair to say held by the public generally), that the author's disregard for his duty of confidentiality had been blatant and reprehensible, the United Kingdom courts would be free to refuse to enforce any claim brought by the author based upon such copyright as he might contend belonged to him. The Copyright Act 1956, the law then in force, contained an express provision which would appear to support this proposition; section 46(4) expressly declared—

Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

In the 1988 Act not only is that provision reproduced (section 171(1)(e)) but there is a new provision in the following terms—

Nothing in this Part affects any rule of law preventing or restricting the enforcement of copyright on grounds of public interest or otherwise (section 171(3)).

It is perhaps worth pointing out, also, that Article 17 of the Berne Convention contains a general provision which would appear to authorize these provisions in the United Kingdom copyright law.

(iii) One law lord, Lord Jauncey, expressed the view that the United Kingdom courts have a general equitable jurisdiction to decline to enforce copyright claims in certain cases; and he gave two instances—where a work contained false statements calculated to deceive the public; and where the work was of a grossly immoral tendency; and he went on to say that as the action of Peter Wright in writing and publishing his book in breach of his duty of confidence to the Crown so “recked of turpitude” it was inconceivable that a United Kingdom court would afford either him or his publishers any protection in relation to any copyright which either of them might possess in the book. The two cases cited in support of these propositions by Lord Jauncey were heard in 1905 and 1916, and whether today they would be regarded as having the authority suggested by the law lords is perhaps open to question.

The *British Leyland* and *Spycatcher* cases demonstrate a readiness by the House of Lords to modify or override rights of copyright by invoking principles or rules from the general jurisprudence of the United Kingdom whenever, in the Court's view, the exercise of copyright appeared to be contrary to the public interest.

### III. Public Lending Right

The information about public lending right given in the last “Letter” related to the first distribution made under the scheme, in February 1984. The sixth distribution was made in February 1989, and it is interesting to compare the operation of the scheme now with corresponding details for 1984.

#### *Size of Fund*

The fund was established in 1979 by the Public Lending Right Act at £2 million. It was increased for the 1986 distribution to £2.75 million and for the 1989 distribution to £3.5 million. The Government has already announced a further increase to £4.25 million for 1991/92.

#### *Operating Costs*

The costs of operating the scheme are of two kinds: the general cost of the Registrar and his staff, and the offices and equipment of the Registry; these were £378,000 in 1984 and £348,000 in 1989; the second special item is a contribution made out of the fund to the local authorities toward the costs they incur in operating the sampling system; this contribution was £35,000 in 1984 rising to £45,000 in 1989; one reason for the increase being the fact that in 1985 the number of libraries in the sample (and consequently required to collect and submit statistics) was increased from 16 to 20. The total operating costs, therefore, for 1984 were £413,000 and for 1989 were £393,000. This downward trend is clearly a satisfactory one, especially when expressed as a percentage of the fund itself; the 1984 costs were 21% of the £2 million fund whereas the 1989 costs were only 11.2% of the £3.5 million fund.

#### *Loans*

On the basis of the statistics produced from the record of loans made by the libraries in the sample, the total loans from public libraries in 1984 was 649 million, of which, according to the analysis of the sample statistics, 182 million (28%) were of books registered for public lending right; in 1989, the total loans had slightly dropped to 624 million, of which 238 million (38%) were of registered books.

#### *Registered Authors and Interests*

In 1984, only 7,562 authors were registered and the number of individual interests (i.e., an entitlement to a share) was 63,202. In 1989, the registered authors totalled 16,034 and the number of interests was 140,573.

#### *Rate Per Loan*

Notwithstanding that the number of registered authors and interests have more than doubled since 1984, because of the increase in the fund and the slight—decrease in operating costs, it has been possible to increase the rate per loan substantially. In 1984, it was 1.02 pence, rising in 1989 to 1.45 pence.

#### *Other Changes*

The scheme as introduced in 1984 did not apply to translators; but in 1985 it was varied so as to admit them. Also in 1985 eligibility to participate in the scheme was extended, on a reciprocity basis, to authors from the Federal Republic of Germany.



In 1984, there was a maximum limit of £5,000 per author; in 1989, this was increased to £6,000.

In 1989, the number of libraries within the sample required to maintain lending records will be increased from 20 to 30; and it is expected that this will significantly reduce the average error in the sampling process.

In 1987, a survey of authors' views on the operation of the scheme was carried out which indicated that there was a high level of satisfaction with the scheme and its administration, subject to a continuing view that the level of payments received is inadequate. The increases in the fund for 1989 and again for 1991/92 should go some way toward meeting this particular criticism.

## Calendar of Meetings

### WIPO Meetings

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

#### 1990

- January 29 to February 2 (Geneva)** **Committee of Experts on the Interface Between Patent Protection and Plant Breeders' Rights** (jointly organized by WIPO and the International Union for the Protection of New Varieties of Plants (UPOV))
- The Committee will examine the interface between patent protection and plant breeders' rights, on the basis of documents of the International Bureau of WIPO and the Office of UPOV.
- Invitations:* States members of WIPO, UPOV or the United Nations and, as observers, certain organizations.
- February 19 to 23 (Geneva)** **Committee of Experts on the Settlement of Intellectual Property Disputes Between States (First Session)**
- The Committee will examine whether the preparation of a new treaty on the settlement of disputes between States in the field of intellectual property should start and, if so, with what content.
- Invitations:* States members of the Paris Union, the Berne Union or WIPO or party to the Nairobi Treaty and, as observers, certain organizations.
- March 12 to 16 (Geneva)** **Working group on the application of the Madrid Protocol of 1989 (First Session)**
- This working group will consider the draft of new Regulations under the Stockholm Act of the Madrid Agreement Concerning the International Registration of Marks and the Protocol (adopted in Madrid in June 1989) relating to the said Agreement and will suggest other measures required by the co-existence of the Madrid (Stockholm) Agreement and the said Protocol.
- Invitations:* States members of the Madrid Union, States having signed or acceded to the Protocol, Greece, Ireland, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.
- May 28 to June 1 (Geneva)** **Committee of Experts on the International Protection of Indications of Source and Appellations of Origin**
- The Committee will advise the International Bureau of WIPO on the possible conclusion of a new treaty on the international protection of indications of source and appellations of origin or the possible revision of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and on the possibilities of increasing the use of the registration facilities of that Agreement.
- Invitations:* States members of the Paris Union and, as observers, certain organizations.
- June 5 to 8 (Geneva)** **Consultative meeting of developing countries on the harmonization of patent laws**
- This consultative meeting will, on the basis of working documents prepared by the International Bureau of WIPO, study problems of particular relevance to developing countries in connection with the preparation of a treaty on the harmonization of certain provisions in laws for the protection of inventions.
- Invitations:* Developing countries members of the Paris Union or WIPO.
- June 11 to 22 (Geneva)** **Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Eighth 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.

- June 11 to 22 (Geneva)** **Preparatory meeting for the diplomatic conference on the adoption of a treaty on the harmonization of patent laws**  
The preparatory meeting will prepare the organization of the diplomatic conference which will negotiate and adopt a new treaty on the harmonization of patent laws. The preparatory meeting will, in particular, establish the draft rules of procedure of the diplomatic conference and decide which States and intergovernmental and non-governmental organizations should be invited to the diplomatic conference and in what tentative capacity.  
*Invitations:* States members of the Paris Union.
- June 25 to 29 (Geneva)** **Committee of Experts on the Harmonization of Laws for the Protection of Marks (Second Session)**  
The Committee will continue to examine draft treaty provisions on the harmonization of laws for the protection of marks.  
*Invitations:* States members of the Paris Union, the European Communities and, as observers, States members of WIPO not members of the Paris Union and certain organizations.
- July 2 to 6 (Geneva)** **PCT Committee for Administrative and Legal Matters (Third Session)**  
The Committee will examine proposals for amending the Regulations under the Patent Cooperation Treaty (PCT), in particular in connection with the procedure under Chapter II of the PCT.  
*Invitations:* States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.
- July 2 to 13 (Geneva)** **Committee of Experts on Model Provisions for Legislation in the Field of Copyright (Third 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.
- September 24 to October 2 (Geneva)** **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-First Series of Meetings)**  
Some of the Governing Bodies will meet in ordinary session, others in extraordinary session.  
*Invitations:* As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States and certain organizations.
- October 15 to 26 (Geneva)** **Committee of Experts Set up under the Nice Agreement (Sixteenth Session)**  
The Committee will complete the fifth revision of the classification established under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.  
*Invitations:* States members of the Nice Union and, as observers, States members of the Paris Union not members of the Nice Union and certain organizations.
- \*October 22 to 26 (Geneva)** **Committee of Experts on the Interface Between Patent Protection and Plant Breeders' Rights (Second Session) (jointly organized by WIPO and UPOV)**  
The Committee will continue to examine the interface between patent protection and plant breeders' rights.  
*Invitations:* States members of WIPO, UPOV or the United Nations and, as observers, certain organizations.
- October 29 to November 2 (Geneva)** **Committee of Experts on a Protocol to the Berne Convention (First Session)**  
The Committee will examine whether the preparation of a protocol to the Berne Convention for the Protection of Literary and Artistic Works should start, and—if so—with what content.  
*Invitations:* States members of the Berne Union and, as observers, States members of WIPO not members of the Berne Union and certain organizations.
- October 29 to November 2 (Geneva)** **Working group on a possible revision of the Hague Agreement (First Session)**  
This working group will consider possibilities for revising the Hague Agreement Concerning the International Deposit of Industrial Designs, or adding to it a protocol, in order to introduce in the Hague system further flexibility and other measures encouraging States not yet party to the Hague Agreement to adhere to it and making it easier to use by applicants.  
*Invitations:* States members of the Hague Union and, as observers, States members of the Paris Union not members of the Hague Union and certain organizations.

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\* Dates particularly subject to possible change.

- \*November 5 to 9 (Geneva)** **Committee of Experts on Measures Against Counterfeiting and Piracy (Second Session)**  
The Committee will continue to consider draft model provisions for national laws on protection against counterfeiting and piracy.  
*Invitations:* States members of the United Nations or specialized agencies and, as observers, certain organizations.
- \*November 19 to 23 (Geneva)** **Committee of Experts on the Settlement of Intellectual Property Disputes Between States (Second Session)**  
The Committee will continue the work it will have started during its first session (February 19 to 23, 1990).  
*Invitations:* States members of the Paris Union, the Berne Union or WIPO or party to the Nairobi Treaty and, as observers, certain organizations.
- November 26 to 30 (Geneva)** **Working group on the application of the Madrid Protocol of 1989 (Second Session)**  
The working group will continue the work it will have started during its first session (March 12 to 16, 1990).  
*Invitations:* States members of the Madrid Union, States having signed or acceded to the Protocol, Greece, Ireland, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.
- December 10 to 14 (Geneva)** **PCT Committee for Administrative and Legal Matters (Fourth Session)**  
The Committee will continue the work it will have started during its third session (July 2 to 6, 1990).  
*Invitations:* States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.

## 1991

- January 28 to 30 (Geneva)** **Information meeting(s) on the revision of the Paris Convention**  
An information meeting of developing countries members of the Paris Union and China and, if it is so desired, information meetings of any other group of countries members of the Paris Union will take place for an exchange of views on the new proposals which will have been prepared by the Director General of WIPO for amending the articles of the Paris Convention for the Protection of Industrial Property which are under consideration for revision.  
*Invitations:* See the preceding paragraph.
- January 31 and February 1 (Geneva)** **Assembly of the Paris Union (Fifteenth Session)**  
The Assembly will fix the further procedural steps concerning the revision of the Paris Convention and will take cognizance of the aforementioned proposals of the Director General of WIPO. It will also decide the composition of a preparatory meeting which will take place in the first half of 1991.  
*Invitations:* States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.
- \*June 3 to 28** **Diplomatic Conference for the adoption of a treaty on the harmonization of patent laws**  
This diplomatic conference will negotiate and adopt a treaty on the harmonization of patent laws, which will supplement the Paris Convention as far as patents are concerned.  
*Invitations:* To be decided by the preparatory meeting to be held from June 11 to 22, 1990 (see above).
- September 23 to October 2 (Geneva)** **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Second 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 1991, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1990, and consider and adopt the draft program and budget for the 1992-93 biennium.  
*Invitations:* States members of WIPO or the Unions and, as observers, other States members of the United Nations and certain organizations.
- \*November 18 to December 6** **Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property (Fifth Session)**  
The Diplomatic Conference will negotiate and adopt a new Act of the Paris Convention.  
*Invitations:* States members of the Paris Union and, without the right to vote, States members of WIPO or the United Nations not members of the Paris Union as well as, as observers, certain organizations.

\* Dates particularly subject to possible change.

## UPOV Meetings

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

### 1990

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|--------------------------------|--|
| April 23 to 27 (a.m.) (Geneva) | <b>First Preparatory Meeting for the Revision of the UPOV Convention</b><br><i>Invitations:</i> Member States of UPOV.   |
| April 27 (p.m.) (Geneva)       | <b>Consultative Committee (Forty-First Session)</b><br>The Committee will mainly discuss the outcome of the First Preparatory Meeting for the Revision of the UPOV Convention.<br><i>Invitations:</i> Member States of UPOV.   |
| June 25 to 29 (Geneva)         | <b>Second Preparatory Meeting for the Revision of the UPOV Convention</b><br><i>Invitations:</i> Member States of UPOV.  |
| October 15 and 16 (Geneva)     | <b>Third Preparatory Meeting for the Revision of the UPOV Convention</b><br><i>Invitations:</i> Member States of UPOV.   |
| October 17 (Geneva)            | <b>Consultative Committee (Forty-Second Session)</b><br>The Committee will prepare the twenty-fourth ordinary session of the Council.<br><i>Invitations:</i> Member States of UPOV.  |
| October 18 and 19 (Geneva)     | <b>Council (Twenty-Fourth Ordinary Session)</b><br>The Council will examine the reports on the activities of UPOV in 1989 and the first part of 1990 and approve documents for the Diplomatic Conference to Revise the UPOV Convention.<br><i>Invitations:</i> 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

### 1990

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|--|---|
| April 11 to 13 (Paris)                       | International Publishers Association (IPA): Copyright Symposium   |
| May 8 to 11 (Washington)                     | Foundation for a Creative America: Bicentennial Celebration of the Enactment of the United States Patent and Copyright Laws |
| May 13 to 17<br>(Beetsterzwaag, Netherlands) | International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislative Committee                  |
| May 28 to 30 (Helsinki)                      | International Literary and Artistic Association (ALAI): Study Days  |
| October 8 to 14 (Budapest)                   | International Confederation of Societies of Authors and Composers (CISAC): Congress   |

