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# Copyright

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## Notifications Concerning Treaties

### Berne Convention

#### Notification Concerning Articles II and III of the Appendix to the Paris Act (1971)

#### EGYPT

The Government of Egypt deposited, on March 12, 1990, a notification by which it referred to the deposit, on March 2, 1977,\* of its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971, and declared that it will avail itself of the faculty provided for in Article II and the faculty provided for

in Article III of the Appendix to the said Convention as so revised.

In accordance with Article I(2)(b) of the said Appendix, the declaration of Egypt is effective until the expiration of a period of 10 years from October 10, 1984, that is until October 10, 1994.

*Berne Notification No. 128, of March 14, 1990.*

\* See *Copyright*, 1977, p. 63.

## Studies

### Copyright: The Achievements and Future Development of European Legal Culture

André KEREVER\*

Copyright, as a coherent field of legislation, appeared during the 18th century in the States of Western Europe. To understand its nature and the part it plays in our world, it is not uninteresting to take a look at its history. I might first describe, as a kind of introduction, the circumstances of its birth. I will then analyze its growth to maturity through the 19th century. In a second part, I will attempt to identify the problems faced by European copyright today. Finally, the conclusion will endeavor to depict its future prospects.

#### The Origins of Copyright in Europe

1. All legal historians are agreed that the origins of today's copyright are to be found in the system of "privileges" granted by the sovereign to "booksellers," that is to say the publisher-printers, after the spread of Gutenberg's invention.

This "privilege" is what we would call in our language an exclusive right, afforded for a set period of time, to authorize and, above all, to prohibit the publication of a work by others. It therefore constitutes an exclusive right enabling the "bookseller" to oppose counterfeit copies of a work covered by the privilege.

The privilege also constitutes a political authorization to publish the work.

In the light of our concepts, the privilege constitutes a complex right deriving from both private law, since it enables its beneficiary to oppose his competitors, and public law, since it constitutes an authorization to publish granted by the censure authority in a context in which freedom to publish was not admitted.

This mixture of private law and public law should not, however, surprise us since, although the freedom to disseminate the written word has long

since been acquired in Europe, anything connected with use of the air remains subject to national and international regulations, if only for the reason that available wavelengths are a rare commodity. In some of our laws, the need to obtain the authorization of the authors of the works disseminated and that of authorities or public law commissions is closely interrelated.

It is a remarkable fact that, although modern copyright varies from one State to another, all the States of Western Europe have experienced the same legal system of the privilege.

Now that time has passed, we can identify the factors that explain the emergence of that legal notion of privilege:

(a) *Political*: a privilege was granted at the discretion of the sovereign whose absolute power was the source of all individual rights.

(b) *Technical*: the technique of printing enabled merchants (bookseller-publishers) and artisans (printers) to produce large numbers of books, to mechanically reproduce the written word.

(c) *Economic*: these same merchants or artisans were only able to achieve such a multiplication of copies by first investing considerable sums. The operation was only viable if the investor had a right to prohibit others from copying the work, that is to say to prohibit counterfeiting.

It may be noted, in parenthesis, that at least at the beginning of the Gutenberg era, the "bookseller's" investment was not only financial but also intellectual. The reason for this was that the texts of ancient authors had to be reproduced and these were only known through the manuscripts kept in the monasteries. However, those manuscripts were the work of copiers many of whom had made errors of transcription. The bookseller had therefore to choose the good manuscripts and weed out the bad ones. That fact was perhaps given as a justification.

(d) *Cultural*: finally, books as they resulted from Gutenberg's invention became a product that was capable of cultural consumption. It would be exaggerated to speak, as in our times, of mass consump-

\* Conseiller d'Etat, Paris.

Address given on September 21, 1989, at a copyright symposium held in Brussels by the International Copyright Society (INTERGU).

tion of culture but nevertheless a reading public grew up and led to an appreciable economic demand in the cultural field.

II. The transition from *privilege to copyright* warrants some attention.

The theoretical justification for the privilege naturally disappeared with the end of absolute monarchy. Since he was no longer the source of all law, the sovereign obviously had no further capacity to grant privileges.

However, of course, the economic need to protect investors against counterfeits remained. The disappearance of privileges therefore left a legal vacuum that had to be filled.

All the States of Western Europe experienced a changeover in that the effect of the law was to replace the sovereign by the author himself as the source of the right to prohibit unlawful copies, whereby the right was transferred to the publisher under a contract.

This changeover was far from simultaneous. The first resulted from the English law known as the Statute of Anne in 1710. Denmark and Norway adopted an ordinance in 1741, Spain a law in 1762. The 1787 Constitution of the United States of America numbered an exclusive right of authors to their writings amongst the matters reserved for federal laws. The French revolutionary decrees then followed in 1791 and 1793. Various elements of copyright were recognized in the 1794 General Code of Prussia. The various Italian States reached that situation during the first 15 years of the 19th century. It therefore took a century for Western Europe to complete the changeover from privilege to copyright.

There is nothing surprising in this long period of time. The transition to the rights of the author indeed presupposed the end of absolute monarchy and the primacy of law, an expression of the general will, as the source of law, an impregnation with "new ideas" particularly that of "natural law" and finally the emergence of capitalism based on the legal equality of the economic operators. This explains why Britain was first to take that path since it has preceded the other European nations in its political, ideological, legal and economic revolutions.

In the case of France, it is interesting to note that the Revolution completed the work of the ancien régime, but did not break with it.

An Order of the King's Council of April 30, 1777, indeed stipulates:

Property in the work shall belong to the author who shall transfer it by contract to the publisher.

That is to say that the privilege became simply an instrument of censure, an authorization to pub-

lish, and that the exclusive rights of the publisher were based solely on the contract. That censure was suppressed by the Decrees of 1791 and 1793.

These instruments have remained famous throughout the history of copyright due to the solemn, and indeed emphatical, words of Le Chapelier, rapporteur for the 1791 Decree, who proclaimed that:

The most sacred and the most legitimate, the most inattacking and the most personal of all kinds of property is property in a work, the fruit of a writer's thinking.

However, the rest of the speech is less well known. Le Chapelier claimed that:

It is nevertheless property of a type quite different to all others since once an author has delivered his work to the public he has associated the public with his property or rather he has transmitted it to the public entirely.

In other words, the "sacred" nature of the property subsists only in the *undisclosed work*. After disclosure, the work is appropriated by society with the condition that the author may enjoy some benefit of his work.

In a more sober vein, but less restrictive in his promotion of copyright, Lakanal stated in his justification for the second Decree in 1793:

Of all types of property, the least open to contestation...is unquestionably that of productions of the mind.

Still as regards France, it will be noted that recognition of the right of performance (1791) preceded recognition of the right of reproduction (1793). That sequence of events shows that a technological innovation plays a moving part in the development of the law. Printing had led to the right of reproduction as a defense against counterfeiting. However, that legal basis was extended to public performance despite the fact that the techniques of theatrical performance used at the close of the 18th century had hardly changed since Plautus.

From its beginnings between 1710 and 1815, European copyright was to experience a slow development to maturity during the 19th century. It is from that maturing that today's European copyright has emerged, which we shall now review by first noting the aspects common to the various national laws and then the major differences between them.

## Part One: European Copyright After Its Maturing

### I. The Common Features

Today's European copyright was shaped in the 19th century. The following common features emerge from that development:

(1) *Its Field of Application: From "Merit" to "Originality"*

At the time that copyright emerged, the major prerogatives granted to an author, particularly the exclusive right to authorize or prohibit certain acts of exploitation of his works, were ideologically based on the creator's merit.

As we have already seen, Lakanal justified the right of reproduction by the concern to protect "productions of the mind." An author deserves protection because he expresses intellectual thoughts, diffuses teaching or elaborates aesthetic articles. The Constitution of the United States of America ascribes to the exclusive rights of "authors and inventors" the task "to promote the progress of science and useful arts." From the notion of "merit" we have passed, as a criterion of protection, to that of "originality," a notion that differs both from merit as also from novelty. Originality may be defined as an expression of the author's personality in the forms that he creates.

The extension of the protected creations can also be associated with this development. In France, for example, the courts examined the notion of "work," a term used in the initial texts on copyright, and were somewhat hesitant to reserve protection for works of some importance and to refuse it for works of lesser scope, such as songs, and finally accepted the extension of protection to all original creations, even those known in the language of the 19th century as "even the most paltry productions," an expression that shows that the notion of merit was not, at that time, as yet completely suppressed.

European copyright is not only unconcerned about merit, but also about the "purpose," whether utilitarian or not, of creations. This indifference proves that it is incorrect to hold that copyright protection is reserved for the productions of fine art alone and that its extension beyond that field would be tantamount to corruption of protection. The French Decree of 1793 already protected "writings of all kinds," an expression that showed the intent to protect all works having a literary form, that is to say an assemblage of words and signs, and not only works of literature.

The originality that is protected is that of the form and not that of the substance, of the ideas. There is practically no divergence on the exclusion of ideas in the various European systems of law.

(2) *The Distinction Between Author's Rights and Property in the Physical Medium*

European legal thinking took a big step forward in the 19th century when it distinguished between property in the physical medium used for fixing the work of the mind and property in the work itself as an intangible element.

The first copyright laws that replaced the publishers' privileges did not contain such a distinction. They were unaware of it just as were the Roman lawyers who argued whether a statue was the property of the sculptor or that of the owner of the marble since they were unable to conceive of a distinction between the intangible form created by the sculptor, as an object of law, and the marble in which it was embodied. In the French legal texts at the end of the 18th century and the beginning of the 19th, terms were used such as "work" or "manuscript" to encompass within the same word both the material object fixing the work and the work itself.

It was the philosophers who showed the way to the lawyers and led them to distinguish between physical property and intellectual property.

Thus, Rousseau exclaimed in respect of *Emile*:

When alienating my manuscript, it was in no way my intent to sell the ownership of my work but only the profit from printing and publication.

Kant, above all, in his work on the unlawfulness of counterfeiting books, eloquently demonstrated that a creator's rights can be infringed without necessarily stealing his manuscript.

Two quotations may illustrate the emergence of the concept of intellectual property:

Is a book a piece of merchandise that the author can negotiate with the public...or is it not rather simply the use of his faculties that he can concede to others, but without ever alienating them?

Or again:

Writings are speeches that can only exist within a person. Consequently, they belong exclusively to the person of the author and that person has an inalienable right, *jus personalissimum*, to speak always in his own name through the intermediary of another, that is to say that no one may pronounce that speech in public other than in his name.

The 19th century lawyers, particularly Raynouard and Kohler, strongly contributed to incorporating this distinction between the medium and the work into the law.

(3) *The Distinction Between Economic Rights and Moral Rights*

This awareness of an indissoluble link between the creator and his creation led to a distinction between the economic or pecuniary rights and the moral rights.

Economic rights are those that permit the author to authorize, against remuneration, acts of exploitation of a creation that itself never leaves the creator.

The moral rights express the subsistence of that link between the creator and his creation, that *jus personalissimum* that prevents the intermediary mentioned by Kant, that is to say the exploiter or the user, from being unaware of the authorship or prejudicing the integrity of the work.

It is this *jus personalissimus* that explains and justifies the fact that economic rights constitute exclusive rights invocable against all persons even where they are foreign to the contract between the author and the exploiter. Copyright is therefore an exception to the rule that a contract can only generate obligations between the parties to the contract and that, in principle, they are not invocable against third parties, save for publication formalities.

#### (4) *Absence of Formalities*

It is again this *jus personalissimus* of the author that explains a ruling that is common to all European copyright laws. The exercise of this right cannot be subjected to any formality since the right is generated by the simple fact of creation.

#### (5) *Regulations on Copyright Contracts*

The background of copyright shows that European lawmakers were always concerned to protect the regular publisher against counterfeiters. The instrument of such protection is the publishing contract under which the economic rights generated in the person of the author are assigned to the publisher.

As copyright has matured, most of the European lawmakers have shown concern for the imbalance between the exploiter (publisher or producer) and the author, and have imposed a certain number of rules on this type of contract by making restrictions, for the benefit of the author, on the general principle of contractual freedom.

It is obviously not possible here to analyze those rules country by country. I shall simply note that the "density" of rules varies from one State to another. To simplify, and in anticipation, it may be said that there is a minimum of regulations in the countries of the common law tradition and somewhat more in the countries of Roman or continental tradition.

Among the elements of these rulings on contracts are to be found the subject matter of the contract and, frequently, the restrictive interpretation of the assigned rights; the formal conditions of contracts; the special rules on publishing contracts and performance contracts.

#### (6) *Collective Administration*

Just as the 19th century witnessed the creation and legal recognition of employees' unions, that same period permitted authors and creators to form societies to collectively administer the rights of their members. The first of those bodies would seem to have been the French SACD (*Société des auteurs et compositeurs dramatiques*) founded by Beaumarchais. It is doubtlessly the activities of that

society that are to be thanked for the early recognition in France of the right of performance (1791) compared with that of the right of reproduction (1793).

Any creation of a collective administration body implies a relationship with the State. In our countries, societies of authors have a legal status that differs from one country to the other. Application of the Treaty of Rome has meant that these societies have been subjected to community law on restrictive practices.

#### (7) *The Berne Convention*

All these common features have meant that the Western European States were able to join together as of 1886 within the Berne Convention for the Protection of Literary and Artistic Works. Among its founder-members are to be found Belgium, Britain, France, Germany, Italy, Spain and Switzerland.

Through periodical revisions, the Convention has been able to accommodate the technical innovations that have taken place in the field of communication: mechanical sound reproduction, cinema, radio and television. This faculty of adaptation would seem somewhat more problematic today since almost 20 years have gone by since the last revision Act. I shall return to this weakness, which I may hope is provisional.

## II. *The Differences*

It is an obvious fact that, despite the common features, the domestic copyright laws of Europe also have their differences.

Those differences derive basically from differing concepts of the very nature of copyright.

As we know, two opposing philosophies exist as regards the relationship between law and the State.

One is the *naturalist* approach according to which there exists a natural law that is external and superior to the State. The State lawmaker is under an obligation to discover and confirm the tenets of natural law. The recognition of the rights of man springs from that philosophy.

Under the *positivist* approach, law is a creation of the State. The prince, or the law, sovereignly defines what is nothing other than the overall system of laws and other provisions made compulsory by the sovereign whose legislative power is limited by no external principle.

Copyright is at the very heart of this dialogue between Antigone, the champion of natural law, and Creon, the advocate of substantive law.

If Kant is correct in stating that a work is inseparable from the person who has created it,

copyright is the law of the person *par excellence*. The lawmaker is obliged to draw the consequences of this intimate and indivisible relationship between the creator and his creation. An author cannot alienate his work, which is a part of himself, but may solely authorize the use of it. This leads to two principles: (a) the moral right to authorship and to the integrity of the work is perpetual and inalienable; (b) any use of the work is subject to the permission of the author who may derive monetary benefit from his permission.

Under the positivist approach, there is no copyright as such, but rather *various* rights afforded to the author within the limits laid down by the law depending on the lawmaker's concept of equity, of social usefulness and of the balance between opposing interests.

Obviously, no national legal system derives wholly from one or the other of these philosophies. Both the naturalist approach and positivism are mixed to varying degrees in each national system.

On the other hand, a more stringent classification has been highlighted by Adolf Dietz who makes a distinction between "open" and "closed" legal systems.

An "open" system is one in which the lawmaker expresses himself in general terms, in broad categories. Such systems are flexible and can readily adapt to technical developments since the courts enjoy a large measure of freedom.

The systems known as "closed" consist in stating precisely and limitatively the acts of exploitation that are subject to the author's rights. Such systems are rigid. Authors' rights are listed in detail as in a catalog. Any act of exploitation not mentioned in the catalog is outside the author's control and can only be integrated by means of a specific legislative amendment.

As an example of "open" systems one may mention the French and Belgium laws. Without going as far as to subject to copyright any use whatsoever of a work, these laws nevertheless define broad categories of use, for example reproduction and performance. Reproduction covers all techniques from printing to compact discs and performance applies to all communications to the public whether through Beaumarchais' theater, Lumière's cinema, wireless radio and television or satellite. The law endeavors to avoid the pitfalls of technical developments by basing itself on the purpose of the act of exploitation. It is therefore of little importance whether the work is communicated to the public on the theater stage or by an electronic means.

The United Kingdom possesses a "closed" system. Broadcasting is only subject to copyright since the law explicitly says so. The same degree of precision is required for cable and for satellite.

There is an at least partial correlation between the naturalist approach and the open systems, on the one hand, and the substantive approach and the closed systems, on the other.

This dichotomy explains the main differences that can be observed between the various European domestic laws.

#### (a) *The Recognition of Moral Rights*

Obviously, the naturalist conception of law will prove more respectful of moral rights. On the other hand, in the States in which the substantive concept prevails, copyright will be reduced to the economic rights and moral rights will only be protected by common law or by other bodies of law such as the protection of privacy, the repression of slander, unfair competition, consumer protection. This separation is complete in the law of the United States of America. It was also complete in the United Kingdom up to the 1988 legislative reform.

The European countries are to be found within a range whose extremities are constituted by the United Kingdom (almost no protection of the author's moral rights) and France (a high level of protection). However, the 1988 reform of British law has in part made good that gap.

#### (b) *Term of Protection*

Determining the period during which authors' rights are recognized raises problems of theory.

The logic of the Kantian naturalist conception of law would require that all rights, whether moral or economic, should subsist forever. The indissoluble link between the work and its creator would thus be transmitted, after the latter's death, to his heirs.

The substantive concept, on the other hand, means that the term of rights is necessarily limited. Thus, in the system under the French Decrees of 1791 and 1793, Le Chapelier considers that the property of a work is transferred to society by the simple fact of its disclosure and that the author is entitled solely to a kind of recompense for his creative efforts in the form of exclusive rights during his lifetime plus an additional period of five years.

At the onset of the 19th century, the advocates of the naturalist concept, who prevailed in France, attempted to introduce the perpetual nature of literary property and thereby demonstrated the extent of the changes in doctrine that had occurred in that country in half a century. However, the advocates of the personalist concept of copyright had to accept, for obvious practical reasons, that economic rights had indeed to be limited in time. To finish with this French parenthesis, I may mention the compromise of doctrine, confirmed by the law of March 11, 1957, that consists in proclaiming the perpetual nature of moral rights and limiting the

effects of a restricted term to the economic rights alone.

Be that as it may, the concept of naturalist law may be reflected in two types of provisions: (1) firstly, the term of protection runs as from the death of the author, thereby confirming the personal link between the author and the creation, and not from the disclosure of the work, and (2) by a relatively lengthy *post mortem* term; a 50-year minimum is required by the Berne Convention and other European countries apply even longer terms (generally 70 years).

### (c) *The Situation of the Salaried Author*

The substantive concept, that is not faced with the theoretical obstacle of the link between creator and work, has no hesitation in vesting the author's rights in the employer, *ab origine*. This would seem to reflect the spirit of the former publisher's privileges.

The employee author or creator is to derive the recompense for his creative activity from his salary. Since no difference can exist between an employer who is a natural person and an employer who is a legal person, the substantive lawmaker does not shy away from recognizing a legal person as the author of a work.

The naturalist approach cannot admit, at least not in principle, that a legal person can be an author. A legal person is no more capable of creating a work than he is of accepting a lunch invitation, unless through his representatives or agents. Consequently, copyright is generated in the person of the salaried author and can only be transferred to the employer through a contract. The legislations that are based on this view tend to differ in the scope of the contract. In France, an employment contract does not normally imply any transfer of author's rights. In other countries, the contract contains a presumption of assignment concerning the economic rights at least. The making of cinematographic works has led to well-known specific solutions.

However, although in practice the theoretical differences, particularly the practical differences, can be attenuated, the gap still remains considerable. To take one example, in the United Kingdom, a phonogram producer is the owner of a copyright in a phonogram as an object, whereas in France and in the Federal Republic of Germany, the producer simply possesses an authorization, granted by the author, to reproduce the works. The producer is therefore not an assignee or successor in title since it is stipulated that such producer is in possession of a specific right in his production in the form of a so-called neighboring right that is distinct from copyright.

### (d) *The Principle of Exhaustion and the Right of Purpose*

The right of purpose as it exists in the Belgian and French legislations constitutes one of the most extreme instances of the flexibility of "open" legal systems. It enables the author not only to control certain acts of exploitation, but also to divide up his authorization depending on the "purpose" of the act. Thus, an author can grant authorization to reproduce his work simply for certain uses of the medium, for instance private use, and withhold public use or the rental of mediums. Likewise, the grant of the right of broadcasting could withhold cable diffusion of the broadcast on the grounds that a cable is a different "purpose" from broadcasting over the air. Under other laws, even those that are open, such a possibility is countered by the principle known as "exhaustion" of copyright, for example on first assignment. An excellent study by Frank Gotzen in *Copyright* (1982, pp. 307 *et seq.*) illustrates the differences between the various European laws in this respect.

### (e) *The Importance of the Exceptions*

It is a well-known fact that a copyright law is determined not only by the scope of the rights afforded to authors, but also and perhaps above all by the exceptions or derogations to those rights.

These exceptions can be divided into two groups:

*Absolute exceptions:* use of the work is removed from the author's exclusive right and produces no financial compensation.

*Relative exceptions:* the author is deprived of his exclusive right to authorize use of the work, but on condition that he receives remuneration or royalties. The principle of possible exceptions is given to the European lawmakers by the framework of the Berne Convention provisions which permit them solely for the right of reproduction, the right of broadcasting and the right of cable distribution.

Despite this framework, the scope of exceptions varies quite considerably from one State to another.

Thus, the exceptions to the right of reproduction based on fair use or on private use (domestic use, to be more exact) are dealt with differently. Although no Western European State has provided the possibility of restrictions on the exclusive rights of broadcasting, statutory licenses have been introduced for the cable distribution of broadcast radio programs (cf. Austria and Denmark). Some countries possess special jurisdictions that are involved in the negotiation of rights, or subject such negotiations to price legislation.

### III. Summing-Up

Since the enactment of the Statute of Anne, the European States have drawn up a body of copyright law of high inspiration, of sophisticated legal techniques and which, despite inevitable imperfections, provides a legal basis adapted to the development of cultural activities.

It was the Renaissance and the invention of printing that led to cultural activities in the modern sense of the word, that is to say an independent activity of society, no longer required to serve the prince patron or to serve the church. Cultural activity can be defined as the creation of works of the mind with a view to their communication to the public. The author is central to this right and the merchant or manufacturer that assumes communication of the work only enjoys the necessary legal protection through the intermediary of a contract—which, in some legislations, may be an employment contract. Although, as we have seen, marked differences may exist between the domestic legislations of Europe, the principle of protection for works is established as confirmed by two international conventions of a worldwide vocation, due to the initiative of Europe.

Is this development stable or, on the contrary, is it threatened?

I shall now attempt to provide an answer to that question.

#### Part Two: The Future of European Copyright—A New Economic and Technological Environment Since 1970

I. To begin with, we must examine the technological and economic factors liable to influence the development of the law.

Copyright was generated by the association of a *technological* revolution: printing that made large-scale dissemination possible; a *cultural* revolution that produced a public demand for cultural consumption; a *philosophical* and *political* revolution: the awareness of the rights of the individual, the ideology of freedom and legal equality; and finally an *economic* revolution: the advent of capitalism, that is to say an enterprise that acts through its employees and seeks profit by satisfying the needs of the market.

This environment was profoundly changed in the 19th century and in the first half of the 20th century, at least as regards the technological component, with the appearance of new sources of energy and new modes of communication: records, cinema, broadcasting, and in the operation of the economic regime. These transformations have in-

deed been well integrated into copyright. Better still, they have led to its improvement and internationalization through the conclusion of international conventions.

It should therefore be possible to draw an optimistic conclusion that the technological and economic changes in the second half of our century will be just as easily absorbed.

However, it would seem that the transformations brought by the end of the 20th century will be somewhat different from those we have known hitherto.

*Firstly*, cultural activity has become a cultural industry. Those economic activities whose raw materials are, so to speak, constituted by the author's rights have grown in economic importance in a spectacular way for two types of reason: one is the increased demand by a bigger public with a higher standard of living and enjoying more leisure. The second is the increase in investment cost needed for creation and dissemination.

In face of these developments, it is not surprising that the national lawmaker should see the center of gravity move from the author and creator towards the manufacturer, producer or disseminator. The pendulum would seem to be swinging back towards the regime of publishing privileges, or at least its modern equivalent.

*Secondly*, certain new techniques have changed the process for communicating works.

Although printing permitted large-scale communication, it only did so through the intermediary of a manufacturer or a tradesman between the author and his public. All the technical innovations assimilated by copyright have followed this same layout: cinema requires the agency of a producer and a distributor; broadcasting requires the agency of a programmer and a disseminator.

Now, however, the techniques of reprography and of private copying, whether audio or audiovisual, do without such agency and permit anyone to be his own printer or his own programmer and disseminator.

We must remember, however, that the exceptions to the exclusive right of reproduction for private purposes were only accepted by lawmakers and by the international conventions in view of the limited, or even negligible, nature of manual copying. Such authorizations could be compared with the permission to glean given by the owner of a field after harvesting. Such tolerances, even if legally confirmed by usage, in no way implied renunciation of the right of ownership. However, the invention of magnetic copying has assumed an economic importance that relates it to the invention of printing: *it has generated a new type of exploitation that should normally call for an appropriate legal adjustment.*

II. This new environment cannot remain without consequences.

(1) The growing power of the cultural industry creates the risk of copyright being absorbed by economic law.

Since the center of gravity is moving from the author and creator towards the production or diffusion enterprise, the modern lawmaker, concerned with expansion and full employment, has a tendency to neglect the cultural aspects of copyright and to look solely at its economic aspects.

(2) Copyright will be seen as a legal instrument valuable in fructifying the investments accompanying an intellectual contribution, forgetting that the purpose of copyright is primarily a cultural one and that it consists in translating into law the link between the author and a creation that reflects his personality.

The legal quality achieved by the improvement of copyright, together with its international dimension confirmed by conventions that are more precise and more obligatory than those of industrial property, provide at international level exploitation monopolies within which industrial activities attempt to find shelter and whose links with the creative activities of the author are ever more remote. This extension of the field of copyright, considered as a means for protecting investments, constitutes, at best, a sign of adipose anemia and, at worst, a growing cancer.

Thus, for example, copyright protection for computer programs is only obtained at the cost of reassessing the originality requirement. To accommodate software, the French Court of Cassation was obliged to define, in 1986, originality as a "personalized effort" or even as an "intellectual contribution."

In the case of computer programs, it is nevertheless still possible to admit that they are creations expressed in the form of words or signs and that the past history of copyright shows us that protection was never limited to just fine art. Software is at the limits of copyright but is not inherently foreign to it.

That cannot be said, on the other hand, for phonograms as the physical mediums for recordings considered independently of the works of the mind incorporated in them.

Nevertheless, we may currently witness an offensive for such phonogram mediums to be included in the works protected by the Berne Convention in the same way as the musical compositions or words that are engraved on them.

No one would deny that the making of these mediums requires great skill, artistic feeling and know-how. Likewise, no one would deny that these

activities warrant appropriate legal protection. However, such legal protection must be strictly distinguished from that of the author since it is not possible to place the work that has been recorded on the same legal footing as the industrial product that permits the recording.

The potential weakening of copyright through abusive extension of its field of application is indeed illustrated by the fact that those laws that protect phonograms by a copyright do not afford to such mediums a right of performance or at least admit only of a system of statutory licensing, whereas the Berne Convention authorizes no restriction on the exclusive right of performance or of public communication. To reduce the function of copyright to simple protection of investments could but legitimate the proliferation of statutory licensing arrangements despite the fact that the sole theoretical basis for the creator's status demands, in principle, that exclusive rights be afforded.

A further consequence of neglecting the cultural aspect of copyright is to be found in the weakening of the distinction, although it is a capital one, between ownership of the physical medium and intangible property in the work fixed on the medium.

That distinction is nevertheless an essential achievement of our European legal culture and it would be regrettable for such a European achievement to be called into question in the name of Europe itself.

This observation implies no unfavorable judgment of the United States' legal system known as copyright. It is nevertheless doubtful whether European economic unity demands a slavish copy of that branch of American law and the rejection of European law's own genius.

(3) The new technologies call for a legal response.

The recent technical innovations are far from having provoked a uniform response in all European legislations. Satellites and cable are an example.

However, one of those technical innovations, the one that permits generalized private copying, is of special importance and calls for the adjustment of domestic laws as regards the exceptions for private use.

In fact, Europe is divided in this respect into two groups of States: those that subject private audiovisual copying to a kind of non-voluntary license in the form of copyright royalties calculated on the basis of the blank mediums, and the other States in which private copying remains free and gratuitous, or is a subject of parafiscal charges. Likewise, the problem of reprography has been approached in disarray.

Can this dichotomy continue to exist without jeopardizing European copyright? The answer is not certain.

The Berne Convention rules require each contracting State to afford national treatment to foreign authors whereby reciprocity of treatment is prohibited, except for the term of protection.

The differences in the arrangements for private copying thus generate an unequal situation between States: those that have introduced copyright royalties for private copying must afford them to the nationals of other countries whereas their own nationals have nothing to expect from States that have not introduced such royalties.

It is unlikely that national lawmakers will indefinitely accept such disparity. A threat therefore bears on the very principle of assimilation of foreigners to nationals, which is the keystone of the Convention.

Is it necessary to declare that the Berne Convention, this precious achievement, is in danger of being dismantled if it is not capable of accommodating the new technological progress, at least in the shape of a European agreement? It is not always a good thing to be dramatic and the worst does not always happen.

Nevertheless, the fact is that between 1886 and 1971 the revised Acts of the Convention followed each other at approximately 20-year intervals. The Convention cannot remain frozen in its 1971 state, at least as far as the European States are concerned, without the risk of decline.

III. All these negative aspects that cast a shadow on the future of European copyright illustrate a degree of confusion as regards the theoretical grounds for copyright.

This right, it would seem, has enjoyed powerful support since it has been associated with the "rights of man." What greater justification, what better theoretical basis can we imagine?

Nevertheless, Article 27 of the 1948 Universal Declaration of Human Rights may temper that optimism. The Article reads as follows:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

This Article gives primacy to what I would call the rights of the consumers of culture, that is to say the rights of the public. The rights of authors are only set out in second place and are reduced to the protection of "interests."

In fact, the rights under the 1948 Declaration seem further removed from the classical concept of European copyright, based on Kant, that expresses

a personal and indissoluble link between the author and his creation than from a more restrictive concept under which copyright is no more than a recompense afforded by society. This latter concept, as we have seen, is very close to the idea expressed by the French revolutionaries in 1791 for whom works, once disclosed, belonged to society that, in return, afforded rights to the author for only a limited period and as a recompense.

These two concepts lead to two different types of rights: from the concept of Kant ("writings are speeches that can only exist within a person") are logically derived both the full recognition of moral rights and the principle of an exclusive right from the economic point of view.

However, it will be replied, in that personalist concept, the rights of society are not taken into account. An excess of individualism? No, simply lucidity and realism. An author creates only to communicate to the public and the rights of society are indirectly but more effectively respected by the affirmation of the personal link generated by the creation than by opposing the rights of society to those of the creators.

By contrast, the "social" approach ignores the personal link or denies it once the work has been disclosed. The moral rights of creators are ignored and the recompense due from society may unrepentingly take the form of non-voluntary licenses, that is to say simple rights of credit.

This "social" approach is to be found to a great extent in the American copyright system although, in order to effectively protect investment, the scope of statutory licenses is fairly restricted.

The two concepts, authors' rights of the Roman or European type and American copyright, coexist within an increasingly closed world. Within that coexistence, the "rights of authors" are on the defensive for two reasons: the one is well known and the other is more hidden.

Let us begin with the latter reason. Western Europe has always concerned itself with the social position of producers, particularly through State intervention. Our legislations are impregnated, to varying degrees, with a certain portion of what one may call "social democracy."

The result is that the elaboration of the material conditions favorable to cultural creation takes place within the social situation of the creator to such an extent that the essential protection constituted by the author's rights in his creation is neglected. Sight has been lost of the fact that to ensure continued creative activity, copyright legislation constitutes the basis, the indispensable foundation for any cultural policy and that the social measures advocated can only play a subsidiary part.

The other reason for the possible retreat of European copyright on the other hand is well known.

Within our closed and finite world, it is inevitable that the legal system of the dominant economy should exercise great influence. The reply could come from the economic union of Europe since its economic weight is of the same order of magnitude as that of the United States of America.

However, it is also necessary that European economic unification should not sacrifice the specific achievements of European legal culture in the belief that effectiveness can be found in a kind of acclimatization of transatlantic legal culture. All the more so since there exists in the United States those who are in favor of the values advocated by European copyright. How can such trends develop if Europe itself abandons its system of values?

*In conclusion*, five considerations emerge.

(1) Emphasis must be placed on the coexistence of the two systems of copyright.

American copyright that is purely economic, concerns itself basically, or even exclusively, with the protection of enterprise. It therefore ignores the moral rights of the author and makes no distinction between the industrial product constituted by a phonogram and the works of the mind that are fixed thereon. In other words, copyright is unaware of the distinction between authors' rights and neighboring rights since that distinction is indeed immaterial within its internal system of logic.

Roman and European copyright remains broadly inspired by a personalist approach; it protects moral rights and distinguishes strictly between the material medium and the intangible work as it does between authors' rights and neighboring rights. Additionally, this European system of law is sufficiently developed to allow for economic realities.

(2) Not only do the two legal systems materially coexist but in addition, as of recent date, they coexist institutionally within the Berne Union following the accession of the United States of America and within the framework of GATT since that organization has begun to concern itself with intellectual property.

The present wording of the Berne Convention is broadly based, at least as regards relations between

developed countries, on the Roman, continental legal concepts.

Accession by the United States should normally herald a degree of interpenetration of the two systems in a way which would respect the achievements of European copyright, but only on two conditions: (1) that the list of works that must be protected by the Convention remains limited to works of the mind and is not opened up to products and (2) that the domestic legislation of the United States should develop towards minimum recognition of the author's moral rights.

(3) The legal distinction between authors' rights and neighboring rights is and remains essential for preserving the achievements of European copyright. It is not without reason that Adolf Dietz places this distinction among the sides of the "magic rectangle" that should build the framework of modern copyright law, the three other sides being the rights afforded by the lawmaker, the regulations on contracts and collective administration.

(4) European copyright cannot continue unaffected for a long time without a degree of harmonization in respect of the recent technological innovations, particularly that of magnetic copying.

(5) The achievements of European copyright should not be preserved and developed for their own sake, but because they continue to represent the essential legal basis for cultural creation. This need to maintain the legal and economic bases of creation is sometimes lost from sight because the available cultural heritage of mankind is considerable. It may be thought that the important aspect is not so much to increase it as to make it available to the public. But we know that mankind would cease to be itself if it did no more than to contemplate the great works of the past without pursuing creation. In order to feed this flame it is necessary, as René Cassin eloquently said:

...to declare worthy of protection by all, those by the grace of whom the flame of creative intelligence will continue, as the fire snatched from the heavens by Prometheus, to warm and illuminate mankind.

*(WIPO translation)*

## Correspondence

### Letter from Spain

Esteban de la PUENTE GARCIA\*

#### I. Introduction

From the promulgation of the new Spanish Law on Intellectual Property<sup>1</sup> in November 1987 to the time of writing (September 1989), almost two years have elapsed during which we have witnessed the social phenomenon of the new provisions being gradually assimilated by the sectors affected. There are, in our opinion, three aspects of the implementation of the new Law whose importance should be appreciated: first, the normative activity of the Administration in the enactment of regulations elaborating on the Law on Intellectual Property; secondly, the Law's influence in relation to the professional interests of the groups concerned (authors, performers, producers, publishers, etc.) and, finally, its impact on the work of the various jurisdictional bodies.

For the Administration (the Ministry of Culture), the action to be taken has been the development of certain aspects of the Law on Intellectual Property by regulation, the mandate for which is contained in the provisions of the Law itself. For instance, the *droit de suite* or resale share entitlement (Article 24); the verification of print-runs in book publishing (Article 72); the procedure and rules governing the calculation, amount and distribution of a royalty or remuneration for private copying (Article 25); the procedure and composition of the Arbitration Commission on Intellectual Property (Article 143), etc.; all of these have been enlarged upon by regulation during the last two years. One thing still outstanding is the regulation of the Intellectual Property Registry, the necessity of which is determined not only by the mandate written into Article 130 of the Law on Intellectual Property, but also by other needs that have arisen, such as that provided for in Article 100 regarding the registration of computer programs.

Similarly, there have been moves on the part of groups representing the protagonists of the intellectual property rights "market" in defense of their professional interests, in the form of societies newly set up for the collective management of those rights; in some cases it has been a question of merely adapting earlier situations to the new provisions, as with the General Society of Authors of Spain (SGAE); in other cases new administration entities have been actually created for the defense and protection of sectoral interests; examples of this are AGEDI, CEDRO and AIE, the character and composition of which we shall be looking at below.

In the drafting of the Royal Decrees developing specific aspects of the Law on Intellectual Property, there have been frequent occasions for dialogue between the Administration and interested groups on each of the subjects, although in fact there has been no shortage of difficulties since, at the time of their implementation. This is true for instance of Royal Decree No. 287 of March 21, 1989,<sup>2</sup> which introduces the royalty or remuneration for private copying. This text has been the subject of appeals to the Ministry of Culture from three firms that manufacture and import audiovisual equipment and materials, as a preliminary to subsequent proceedings by the contentious-administrative jurisdictional route.

The fact of there being an element of either active or passive resistance does not indicate a lack of social acceptability of the provisions, but rather the quite natural difficulty of accommodating, in a preestablished structure, the new constraints and operational methods that the implementation of those provisions entails. The *droit de suite*, the verification of print-runs in book publishing, the recognition of a royalty or compensatory remuneration for private copying and the establishment of an Arbitration Commission on Intellectual Property are not, in absolute terms, unknown or unprece-

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<sup>1</sup> See *Copyright*, May and June 1988, inserts *Laws and Treaties*, text 1-01.

<sup>2</sup> *Ibid.*, April 1990, text 5-01.

mented in modern copyright. Nevertheless, their incorporation in national legislation that has just emerged from the modernization and updating of a large part of its inner workings is naturally liable to be the cause of quite explicable difficulties of adaptation.

Finally, we feel it is important to develop one or two brief thoughts on the line taken by our judicial authorities in their protection of rights under the new provisions, although, on account of the shortness of the time that has elapsed, we should warn against speaking of hard and fast lines or criteria either in case law or in legal writing. Two short years do not afford sufficient time for jurisprudential trends to show even faintly, still less in any solid form.

## II. The Development by Regulation of the Law on Intellectual Property

### 1. *The Droit de Suite or Resale Share Entitlement*

Article 24 of the 1987 Spanish Law on Intellectual Property regulates a form of protection for the authors of works of three-dimensional art (painting, sculpture, drawing, lithography, etc.) which is entirely new to the Spanish legal order in this area. What it involves is a share for the author in the price paid for his works when they are resold, whenever the sale takes place under specified conditions, and the disposal price is higher than a figure set by regulation.

The right to a share in the price achieved in subsequent sales of original three-dimensional works, which is also known by its French name of *droit de suite*, is based on equitable considerations.

#### A. *Beneficiaries and Subject Matter of the Right*

The author of the three-dimensional work is considered the sole beneficiary of this resale share entitlement. What it is is an unrenounceable and intransferable right relating to acts both *inter vivos* and *mortis causa*. The right lapses with the demise (the natural or declared death) of the author.

The seller of the work is considered the passive subject of the right. He is responsible for the remittance of the appropriate amount at the time of each sale. That amount is withheld by the auctioneer, trader or agent effecting the sale, and placed at the author's disposal.

The objects of the right are works of three-dimensional art exclusively. In the terms of Article 10(1)(e) of the current Law on Intellectual Property, the following among others are considered

three-dimensional works for that purpose: "sculptures and works of painting, drawing, engraving or lithography, ... including drafts or sketches therefor." What are not regarded as benefiting from this provision, on the other hand, are works of applied art (jewellery, goldsmithery, furniture-making, wallpaper, ornaments, clothing, etc.) or industrial designs in general. The same applies to photographs, manuscripts and architectural works. Finally, the works involved have to be original, in other words created by the artist himself, not copies or imitations.

#### B. *Determination of the Basic Price to Which the Right is Applied*

The criteria used in comparative legislation to determine the basis for the application of the author's share are usually three:

(a) *Added-value criterion or system*. The basis here is the difference in value existing between one resale of the work and the next. The 1941 Italian Law says that the increase in value is calculated on the basis of "the difference between the price at the last public sale and the price at the public sale which immediately preceded it" (Article 145).

(b) *Sale price criterion or system*. This is the one adopted by most countries. The share is calculated according to the sale price of the work each time it is auctioned. Its application is all the easier since there is only one reference price, namely the one set when the *droit de suite* is exercised.

(c) *Sale price criterion or system with minimum-figure qualification*. In fact this is a variant of the previous sale price system characterized by a legislatively-specified *minimum* sale price level, above which the resale royalty may be claimed. This is the system that has been adopted by Spanish legislation.

The rationale underlying this system is the need to avoid a situation where management expenses become excessive, as in certain cases they can be greater than the income generated by the operation. That is the reason for the establishment of a minimum sale price only above which the author's *droit de suite* may be granted.

When determining both the minimum price above which the resale share was payable, and the type of percentage that would be applied to the reference figure, the Spanish legislature acted very cautiously. It could not set the minimum figure either too high, as it was not advisable to exclude new or inexperienced artists totally, or too low, as in that case the monitoring and collection expenses would be out of proportion to the small sums to be collected.

The higher the basic minimum figure affording qualification for the *droit de suite*, the smaller the

formula or percentage applied to it had to be. Conversely, if the minimum figure were lowered, the percentage would have to be raised. The existence of this reverse proportionality has been noted in the legislation of the countries that have adopted the minimum price system as the basis for the collection of the *droit de suite*.

It should be mentioned that, in the experience of those countries that have recognized the *droit de suite*, the successful exercise of the right is to a large extent attributable to cooperation from strict and efficient managements (of galleries, auction houses, collecting societies, etc.). If the ratio of the basic minimum price to the percentage to be applied is not properly structured, the result will be either too-high management charges, creating a climate of caution in the art market, or too-low management charges, causing predictable claims of obstruction and inhibition from the sectors involved in the activity, and consequently lessening the effectiveness of the exercise of the right in question.

### C. The Price Set by the Spanish Legislator

Royal Decree No. 95 of April 25, 1988,<sup>3</sup> provides in its Article 1 that the minimum price as from which the *droit de suite* may be exercised is 200,000 pesetas (approximately 1,800 US dollars). This figure is considered the most appropriate in the light of the considerations set forth in the foregoing paragraphs: neither too high, making it applicable only to the works of celebrated authors, nor too low, making the actual administration and economic management of the right unviable.

Furthermore it should be pointed out that the reference figure of 200,000 pesetas is not an arbitrary one but rather the result of a detailed examination of such things as the nature, size, offer price, etc., of a large range of three-dimensional works by Spanish artists that changed hands on our market during 1986 and 1987.

Finally, to clarify the limits within which the percentage of the price of the work applies, it is provided in Article 2 of the Royal Decree in question that the two percent laid down in Article 24 of the Law on Intellectual Property will be applied to the selling price of the work without any deduction. That means that, as in other countries where this form of *droit de suite* operates—the percentage will be calculated on the *sale price* in the case of sale or on the *auction price* in the case of a sale by auction, without any deduction for such things as commissions or other charges which have to be met by the seller in these types of disposal.

Finally it is important to mention that even in Article 24 of the Law elaborated on by this Decree, a period of three years is laid down for claiming the *droit de suite*. When this period expires, any action available to the author for claiming his resale share entitlement is statute-barred.

### 2. Verification of Print-Runs in Book Publishing

Article 72 of the Law on Intellectual Property provides that the number of copies in each edition is subject to the verification of print-runs according to a procedure to be laid down by regulation after the professional sectors concerned have been heard.

Failure by the publisher to comply with the requirements laid down for this purpose entitles the author or his successor in title to terminate the contract, without prejudice to any liability that the publisher may have incurred.

The verification procedure concerned would have to be laid down by the Government in a period specified in conformity with the provisions of the Fifth Additional Provision of the same Law, which provides that the Government will enact the regulation referred to in Article 72 within six months following the entry into force of the Law.

Independently of various contacts that the Ministry of Culture had with the two sectors concerned—authors and publishers—in the course of 1987, when the parliamentary debate on the Law on Intellectual Property was in its final stages, from the beginning of 1988 onwards frequent tripartite meetings were held—between Ministry, authors and publishers—on the implementation of the provisions on the verification of print-runs. The authors quite understandably had misgivings on this question, in view of the fact that the 1975 Book Law had already introduced print-run verifications, whereupon no regulatory provisions were subsequently enacted on it. For its part the publishing sector remained reluctant to support the use, without further ado, of the numbering or counter-signing procedure that the authors were advocating as the most appropriate.

After protracted and heated debates a final text was eventually agreed upon, and it became Royal Decree No. 396, of April 25, 1988.<sup>4</sup> It consists of a preamble, nine articles and one transitional provision; the latter provides for the continuation of the earlier regime for the calculating of the print-runs of works produced under publishing contracts en-

<sup>3</sup> *Ibid.*, February 1989, text 3-01.

<sup>4</sup> *Ibid.*, February 1989, text 4-01.

tered into before the Royal Decree came into force.

Let us take a brief look at the real basis of the problem, the various possible solutions to it and, finally, the course taken by Spanish legislation.

#### *A. Verification of Print-Runs, a Controversial Issue*

One subject that is by no means new in the professional relations between writers and publishers, and is known to come up occasionally when the clauses of a publishing contract are implemented, is the lack of confidence of one of the parties (the author) in the likelihood of the other (the publisher) complying properly with the agreement reached on the number of copies constituting each edition or print-run of the work concerned.

The problem is not actually a general one: the cases in which there is a risk of the publisher being dishonest about the number of copies in a particular print-run or edition are really exceptional; yet the very fact that such a risk exists has created a climate of suspicion among authors, who on various occasions have expressed the desire, through their representative bodies, that legal provisions be enacted on a verification procedure for the print-runs of books.

The truth of the matter is that, up to the present, writers' demands for the verification of the print-runs of their works have actually been taken care of, albeit not very energetically. In the 1975 Spanish Book Law, their desires were catered for by Article 22, which read as follows:

Verification of print-runs. (1) A system of administrative verification of the number of copies published of any work which is the subject of a publishing contract shall be introduced. (2) The corresponding administrative certification shall be the authentic means of determining, at any time, the number of copies published.

Thereafter, because the necessary implementing provisions for the verification system to be put into practice were not enacted, the writers reiterated on a number of occasions, through their representative association, their demands for compliance with the provisions of Article 22 of the Book Law: they did so at the writers' congresses of 1983, 1984 and 1985 and other events, actually petitioning the Ministry of Culture. The most recent statement to this effect was made publicly in February 1987, when their Association expressed the hope that the new Law on Intellectual Property would

...expressly reflect the need to introduce verification of print-runs for book publication, it being necessary to specify the volume in the contract signed by publisher and author.<sup>5</sup>

<sup>5</sup> This statement was published by major daily newspapers, including the ABC of Madrid, on February 18, 1987.

#### *B. Different Solutions Proposed*

In 1975 already, while the draft of the future Book Law was still being worked on, the Collegiate Association of Writers of Spain filed a petition expressing its interest in the inclusion of print-run verification in the Law, and proposing that it be provided for in the following terms:

(1) The checking of the number of copies published was to be done by assigning a correlative number which would appear in each copy published in either of the following forms: (a) an insert of dimensions permitting its inclusion in books of all sizes; (b) an adhesive stamp affixed to the fly-leaf.

Whichever method was adopted, the total number of copies in each edition or reprint and the number of the copy concerned would be shown.

(2) Both the stamps and the inserts would be manufactured by the National Coin and Stamp Factory.

As we mentioned earlier, this desire of Spanish writers was effectively acceded to in Article 22 of the 1975 Book Law which, as we already mentioned, never actually came to fruition.<sup>6</sup>

For its part, the publishing sector has not shown much inclination to recognize the systems of countersignature and numbering as the most appropriate for the verification of print-runs. This is because, on the one hand, the additional work involved in making the verifications would entail costs that would be passed on and reflected in the price of the end product, and, on the other, in view of the publishing piracy practised mainly on Spanish-speaking American markets, the appearance of copies with duplicate numbers or countersignatures would not in itself indicate fraud involving the number of copies published, but more probably denote piratical activity quite unconnected with the publisher's own business.

So, for the publishing sector, the systems advocated by the publishers have a relative degree of effectiveness, and it is preferable to have a verification procedure based substantially on certification given by the printer to the publisher showing the number of copies printed and the date of their delivery to the publisher. That certification would in turn be passed on by the publisher to the author within a specified period following the distribution of the copies of the work.

#### *C. The Subject in Comparative and Treaty Law*

Except in the specific case of Italy (Article 123 of the Italian Copyright Law of 1941 and Article 12 of its Regulations), and of the hybrid system in Portugal (Article 86 of the Portuguese Law of 1985), it may be said that the subject of the verification of print-runs of books does not feature in the copyright legislation of Western countries.

<sup>6</sup> Law on Books, No. 9 of March 12, 1975, (BOE No. 63, March 14, 1975), Article 22.

The Italian Law places the publisher under the obligation to "cause copies of the work to be countersigned" (Article 12 of the Regulations). The associations concerned are responsible for affixing the countersignature on the copies of the work through the intermediary of the Italian Society of Authors and Publishers (SIAE), except where the author takes direct responsibility for countersigning every copy with his handwritten signature.

Portugal also provides for print-run verification (1985 Law). Here the author may opt either for verification of the publisher's accounts or resort to any other method, "such as putting his signature or seal on each copy" (Article 86(7)).

Of great interest in this connection are the conclusions drawn up by the Committees of Governmental Experts of the World Intellectual Property Organization (WIPO) and Unesco on the model provisions that should govern publishing contracts. In the economic relations between publisher and author, it is recommended that the former make his statements of account available to the latter as a means of proving the economic exploitation of the work. Nothing is said, on the other hand, about specific methods of verifying the number of copies produced, or about the mandatory character of such verification.

At the meeting in December 1985 of the WIPO-Unesco Committee of Experts on Model Provisions, the Committee approved Model Provision No. 8 on "Statements and Accounts of Sales" the text of which recommended the adoption by the publisher of a series of measures in favor of the author regarding the verification and justification of the accounts relating to his work, yet without at any time pronouncing on the possibility of specific measures on the verification of print-runs.

#### D. *The Course Chosen by Spanish Legislation*

The contents of Royal Decree No. 396 of April 25, 1988, which elaborates on Article 72 of the Law on Intellectual Property on the verification of print-runs in book publishing, is the result of intersectoral dialogue and at the same time careful, dispassionate analysis of the true nature of the problem: not only were the opinions of the sectors concerned heard, but a study of the subject was also made in the field, by means of specific investigations and by way of the authorized opinions of persons and agencies directly related to it.

The exercise of control by means of a system of countersigning or numbering clearly relieves the publisher of the need to provide the certification referred to in the earlier paragraphs, and also of any need to justify his corporate documentation.

The Royal Decree refers to the Law on Intellectual Property when it establishes the independence

of the print-run verification work on the one hand and, on the other, the work arising from the publisher's contractual obligations, including those written into Article 64(v) of the Law, which lays down the manner in which the publisher should provide the author with the necessary information on the economic position resulting from the printing and publication of his work. It also repeats the provisions written into the Law on the consequences of failure, by the publisher, to comply with the prescribed print-run verification requirements.<sup>7</sup>

Finally, a Transitional Provision clarifies the position regarding the continuing validity of agreements signed prior to the publication of the Royal Decree: to avoid difficulties of *ad tempus* interpretation, it provides that the provisions on the verification of the print-runs of books will apply only to publishing contracts entered into after it has entered into force.

### 3. *The Royalty or Remuneration for Private Copying*

Article 25 of the 1987 Law on Intellectual Property now in force provides:

The authors of works published in the form of books, phonograms or any other sound or visual medium, together with the publishers or producers of those works, and also the performers whose performances are embodied therein, shall be entitled to a share of compensatory remuneration for such reproduction of the said works as is effected exclusively for personal use by means of non-typographical technical apparatus.

It adds that the remuneration is demanded of the manufacturers or importers of equipment (reproduction apparatus) and materials (blank audio and video tapes) intended for commercial distribution in Spain that allow works to be reproduced for the purposes just specified.

Finally, at the same time as it makes clear that the rights in question are to be enforced through the corresponding management bodies, the Law specifies that everything regarding the correct procedure for designating the equipment and materials concerned and the amount of the remuneration and the system for its collection and distribution will be

<sup>7</sup> It should be noted that the absence of any mention, in the publishing contract, of clauses imposing a particular procedure for print-run verification does not provide grounds for termination of the contract. C. Martínez de Aguirre rightly states that "the presence of a clause of such content is not required by either the Law or the Royal Decree, and the only effect of its absence is the automatic application of Articles 2 to 5 of the Royal Decree, and through them that of the data certification system." This is a commentary on Article 72, taken from the work *Comentarios a la Ley de Propiedad Intelectual*, edited by Rodrigo Bercovitz. Madrid, Técno, 1988, p. 1118.

laid down by the Government in the form of implementing regulations.

In the event, faced with an issue as topical in the field of intellectual creation as the problem of private copying, Spain decided to align itself on the group of countries that proposed to tackle the problem head-on. It then selected, from the various procedures mooted, the system of introducing compensatory remuneration or a royalty levied on reproduction equipment and materials. Instead of choosing any other of the systems presented in the Green Paper of the EEC Commission—such as the use of technical devices designed to restrict private copying—Spain has imitated other Community partners (Federal Republic of Germany, France, Portugal) and opted for the system considered most viable.<sup>8</sup>

On this point there may have been some influence from the opinions of the Economic and Social Committee of the European Economic Community when, in its "Opinion on the Green Paper," it pronounced in favor of the need to increase the means of protecting the owners of rights against the reproduction of their works for private purposes, but at the same time emphasized its opposition to any proposal that the system used should be one that prevented the advantages of the new technology from being exploited privately.<sup>9</sup>

It is also important to point out that the drafting of the requisite Decree had the benefit of the opinion of the most representative bodies in the sectors concerned, namely on the one hand the associations of manufacturers and importers of reproduction equipment and materials (apparatus and blank audio and video tape) and also of photocopying machines, and on the other hand the representatives of the professional sectors grouping authors, performers, producers of phonograms and videograms, and also book publishers. Their opinions were heard and in a number of cases reflected in the text of the draft. Royal Decree No. 287, of March 21, 1989, which implemented Article 25 of the Law on Intellectual Property was published in Official Bulletin of the State (BOE) No. 72, dated March 25, 1989; it is made up of a brief explanatory memorandum, 17 articles, two additional provisions and one final provision.

In order to understand it better, we shall divide its contents into four essential parts: area of application; structure of the Joint Commission; agree-

ments of the Commission; and, finally, provisions on distribution of remuneration.

#### A. Area of Application of the Right

Here it is a question of deciding who are the subjects (both active and passive) of the right. Article 25 of the Law on Intellectual Property specifies itself who are obliged or liable to pay the remuneration, namely "the manufacturers or importers of equipment and materials intended for commercial distribution in Spain." The copies made have to be for the personal or private use of the copier, of which we are reminded by Article 31 of the Law on Intellectual Property, which regulates and authorizes reproduction for private use. A question arises at this point: for the purposes of the compensatory remuneration, what are we to understand by "private copying?" The reply is given by Article 1(2) of the Royal Decree, which does *not* regard as private copying or reproduction that done "by establishments that place apparatus for the making of such copies at the public's disposal, or where the copies are used for collective or gainful purposes." Should any such establishment wish to reproduce protected works that are available in the form of books, phonograms or videograms, it has to seek prior authorization from the owners of the reproduction rights in those works. That authorization may be obtained either direct or through the appropriate administration entities.

Attention should be drawn to the implied exception, also to be found in this Article, in favor of the reproduction apparatus existing in publicly-owned libraries, archives, record libraries, film libraries, etc., or in institutions of cultural or scientific character. Pursuant to Article 37 of the Law on Intellectual Property, the reproduction of protected works, done in such cultural centers exclusively for research purposes, is not subject to prior authorization by the owner of the rights. The centers are therefore not affected by the obligation to secure the prior authorization that the Royal Decree (Article 1(3)) imposes on the owners of reproduction establishments, neither therefore should they be exempted from the payment of remuneration under Article 16 of the same Decree.

This provision specifies exclusions from the payment of the compensatory royalty based on circumstances that are either of a professional or of a personal nature. The following are thus considered exempted from payment of the remuneration: broadcasting organizations; producers of phonograms and audiovisual works and recordings; the owners of commercial establishments in which reproduction apparatus is at the disposal of the public; and finally associations and organizations of persons suffering from total or partial visual or

<sup>8</sup> *Green Paper on Copyright and the Challenge of Technology. Copyright Issues Requiring Immediate Action* (English version), Commission of the European Communities, COM (88) 172 final, Brussels, June 7, 1988.

<sup>9</sup> EEC Economic and Social Committee, "Opinion on the Green Paper on Copyright and the Challenge of Technology" (89/C71/04). Published in the *Official Journal of the European Communities*, March 20, 1989 (English version).

auditory handicaps, for whom reproduction apparatus and materials are essential to their day-to-day activities.

With regard to subject matter, the Royal Decree does not add anything special, as Article 25 of the Law itself imposes payment of the compensatory royalty not only for reproduction equipment and machines but also for materials (blank audio and video tapes) and graphic or reprographic reproduction equipment. The manufacturers and importers of equipment and materials are liable to pay when the latter are intended for commercial distribution on Spanish territory, which means that equipment and materials intended for export are not liable, although in fact this circumstance is not expressly mentioned among the exemptions provided for in Article 16 of the Decree.

#### *B. Structure and Operation of the Joint Commission*

It is provided that, for the purpose of identifying the equipment and materials concerned, and setting the amount of the remuneration and the collection procedure, a Joint Commission is set up representing, in equal proportions, the owners of rights and the manufacturers or importers of whom payment of the remuneration is to be demanded.

##### *Composition*

The Commission is composed of 23 members, one Chairman, two Deputy Chairmen, 10 ordinary members representing the owners of rights and 10 ordinary members representing manufacturers and importers.

The Chairman and the Deputy Chairmen are neutral members of the Commission; the need for three neutral persons is justified, apart from the mutual support that they can give each other, by the fact that there will be three subcommissions, the chairmanship of each of which can thus be assigned to a neutral member (Article 10(2)).

The Chairman is responsible, as Article 7 puts it,

... for expediting and coordinating the work of the Joint Commission, convening meetings, controlling debates and exercising the other powers specified in this Royal Decree, and also such powers as may be necessary for the Commission to function properly.

Among his functions, a special mention should be given to the power to refer agreements adopted by the Commission to the Plenary (Article 12(3)). The Chairman thus exercises a neutral, arbitral role between the two parties, which is why he is to be appointed by the Minister of Culture from among persons of recognized standing in the legal or economic fields, being subject to the grounds for abstention or objection provided for in the Law on Administrative Procedure.

The composition and number of ordinary members of the Commission has been worked out according to the need for the sectors concerned to be represented, for the total number to be not so large as to make the Commission inefficient, and for them to set up three subcommissions to do their work.

The appointment of the ordinary members is done by the Minister of Culture on the proposal of the administration entities and of the associations and organizations of manufacturers and importers (Article 5(1)).

##### *Operation*

Generally speaking, it is regarded as being for the Joint Commission itself to lay down rules for its action, in due conformity with the provisions of the Royal Decree (Article 7). It has been considered appropriate to form three subcommissions, one for each sector (Article 10) with a simple membership, their role being to draw up proposals for agreements to be adopted by the Plenary (Article 11).

The subcommissions thus become the appointed place for the negotiation of agreements and, if their work takes place under normal conditions, their proposals should be approved by the Plenary. There are nevertheless two provisions that set limits on their freedom of action: on the one hand they have to agree on their proposals within a period set by the Chairman, and on the other hand, if they have not drawn up an agreed proposal when that period expires, all those that have been put forward in the subcommission are submitted to the Plenary (Article 11(2)).

The Plenary is not however subject to a set period, because, as far as time is concerned, the only thing specified in the Royal Decree is that the Joint Commission will meet and perform its functions for as long as may be necessary for it to reach its agreements (Article 2, second paragraph).

#### *C. Agreements of the Commission*

As already mentioned, the function of the Joint Commission is to: (1) determine the equipment and materials for which compensatory remuneration is payable; (2) set the amount of that remuneration; (3) approve the rules for its collection. There is just one question—concerning the distribution of the amounts collected—that the legislator preferred, in order to avoid delay and disagreement, to lay down *a priori* in the actual text of the Decree.

A few rules are laid down for the adoption of agreements (Article 12), providing for instance that only a simple majority is required in the Plenary if the subcommission concerned has reached its agreement unanimously. If the subcommission was

not unanimous, an absolute majority is required in the Plenary.

Approved agreements are conveyed to the Minister of Culture for publication in the Official Bulletin of the State (Article 12(4)). Publication is necessary as the agreements are binding on all persons, although the intention is to make it clear that the administrative involvement is confined to ordering it, and that there is no cause to consider them administrative acts declaring rights and obligations, which can be attacked in the courts of administrative jurisdiction and enforced in accordance with administrative procedures.

On the contrary, given the private nature of this remuneration, it must be understood that its application and enforcement is a matter of strictly private character, and that any incidents that may arise in connection with it have to be settled under civil law.

Finally, agreements will have a term of three years and will be automatically renewable unless the Commission rules otherwise (Article 12(5)). This period seems adequate, being neither so short as to require the constant convocation of the Joint Commission for renewals nor so long as to make the agreements obsolete in the face of the changes liable to take place in the field of private reproduction.

With regard to the rules for setting the amount of the remuneration, the Commission may decide on a fixed amount or a percentage of the price charged. With regard to the criteria for determining to what equipment and materials the remuneration is applicable, a number of factors to be considered are suggested, such as quality, technical characteristics, duration, reproduction capacity and finally any other factor considered appropriate.

#### *D. Distribution of Royalties*

All that then remains is to carry out the distribution or apportionment of the amount received in remuneration for private copying. Of the total amount collected, the Royal Decree requires the administration entities to deduct 20% and assign it to training and promotional activities for the benefit of new authors and performers.

The remainder is apportioned by the administration entities for distribution to its right-holding members in the following proportions: (a) *authors*: 40% from audio and video sources and 55% from book sources; (b) *performers*: 30% each from audio and video; (c) *audio and video producers*: 30% each from the same two sources; (d) *book publishers*: 45% from books.

Finally, it is provided that all calculations for the economic purposes of the Royal Decree will be made as from July 1, 1989.

#### *4. The Arbitration Commission on Intellectual Property*

This Commission is a real innovation in Spanish intellectual property law, and without doubt one of the most useful expedients for settling conflicts arising from the collective management of copyright.

It was set up in 1987 by the Law on Intellectual Property. It will operate as a collegiate body of national scope, and will be responsible to the Ministry of Culture. Article 143 of the above Law specifies the functions of the Arbitration Commission, which essentially are the following:

(a) to bring about the settlement, on reference to it by the parties, of any conflicts that may arise between administration entities on the one hand and associations of users of works in their repertoires or broadcasting organizations on the other, in relation to three specific things:

- the grant of non-exclusive authorizations in relation to the rights under management;
- the laying down of general tariffs;
- the conclusion of general contracts between administration entities and associations of users;

(b) to set an amount in lieu of the general tariffs where the parties have not reached an agreement; to that end the operation has to be requested by the association of users or the broadcasting organization, with both parties having to submit to the jurisdiction of the Commission for the settlement of the conflict.

By creating the Arbitration Commission on Intellectual Property, the Spanish legislator has introduced an instrument for the solution of conflicts of this kind which not only is in line with other comparable legislation (such as that of the Federal Republic of Germany, the United Kingdom, Switzerland, etc.), but at the same time perpetuates the recent trend in our country towards the creation of institutional and sectoral arbitration bodies (for instance in the fields of insurance, consumer protection and transport).

#### *A. The Spirit and Content of Royal Decree No. 479, of May 5, 1989*

Article 143 of the Law on Intellectual Property provides that the arbitral procedure, the composition of the Commission and its operation are to be laid down by regulation. During the drafting of the Royal Decree, contact was had with the representatives of the sectors most concerned, such as the General Society of Authors of Spain, the Spanish Association of Phonogram and Videogram Producers, Spanish Radio and Television, a public corporation, the Spanish Association for Private Broadcasting, etc.

Royal Decree No. 479 of May 5, 1989,<sup>10</sup> which enacted provisions on the composition and operating procedures of the Arbitration Commission on Intellectual Property, was published in the Official Bulletin of the State on May 11, 1989. It consists of an explanatory preamble and 28 articles, grouped in four chapters. Its entry into force was planned for July 1, 1989.

In general terms, we can say that the regulatory content is confined to the bare minimum: those indispensable aspects are dealt with that enable it to function and assure the parties of equal treatment and legal security. Any loopholes will be covered by the more recently promulgated Law on Arbitration which will have a supplemental role, not only with regard to arbitration in intellectual property matters, but also in institutional arbitration in such things as insurance, consumer protection and transport, as expressly stated in the First Additional Provision of the Law in question.<sup>11</sup>

#### *B. Chapter I of the Royal Decree: General Provisions*

In its first three articles, the Royal Decree presents the main features of its normative purpose; on the one hand it establishes the competence of the Commission, which as we have seen is already outlined in Articles 142 and 143 of the Law on Intellectual Property. Particular importance is attached to what the parties can agree upon in their arbitral convention: it should not be forgotten that the parties' submission to the Commission will be voluntary, and must be expressly evidenced in writing.

For that reason, while a certain freedom of action is allowed according to what has been agreed between the parties, it must not be at variance with the provisions of the Royal Decree, or the provision written into Article 143 of the Law on Intellectual Property.

#### *C. Chapter II: Composition of the Commission*

As far as its membership is concerned, the Commission certainly has a rather unusual configuration. There are seven members, and they are divided into two groups: on the one hand there are the *arbitrators*, who are three and have permanent appointments, one of them occupying the post of Chairman of the Commission; on the other there are the *representatives of the parties*, numbering two for the administration entity and two more for the other party to the conflict, either an association of

users or a broadcasting organization. What is the effect of this composition, which was already laid down in the Law? The most important feature is the involvement of the representatives of both parties to the conflict in all the Commission's acts, as from the time at which the arbitrators agree on the recognition of the conflict.

The arbitrators will be appointed by the Minister of Culture for a renewable period of three years from among lawyers of recognized standing. One of them will be appointed Chairman of the Commission, and will be responsible for the direction and coordination of its work, debates and votes. The arbitrators exercise their functions with independence, neutrality and impartiality, and are subject to the provisions on objection and abstention contained in the Law on Arbitration, No. 36 of December 5, 1988.

#### *D. Chapter III: General Arbitration Procedure*

Of the four types of conflict which, as we have seen, may be considered by the Commission, three require prior reference by the parties, while the fourth may be submitted unilaterally by one of the parties. A distinction is made here between what we might call a general procedure and a special procedure; we shall deal with the special procedure later.

The Decree regulates general arbitral procedure in its Chapter III, consisting of Articles 9 to 20, the contents of which relate to the request, recognition of the conflict, the conduct of the procedure and the decision or award.

As far as the request is concerned, the procedures are the classical ones for any proceeding of this type: it has to be set down expressly and voluntarily in writing, and has to indicate whether the issue is to be ruled upon at law or in equity. The recognition of the conflict is the responsibility of the arbitrators; a decision not to recognize it, where appropriate, has to be accompanied by a statement of reasons, even though it cannot be appealed against.

The progress of the actual arbitral procedure takes place in the following manner: it begins with the convening of the Commission so that the parties may establish their initial positions (Article 11). Successive meetings are then held in the course of which attempts are made to reach agreement between the parties (Article 13). If agreement is possible, this is set down in writing and the arbitration is declared at an end (Article 15). If no agreement is reached, the Chairman declares an end to the search for a compromise and requests the parties to state their final positions, on the basis of which the award proposal is drawn up (Article 16).

<sup>10</sup> See *Copyright*, April 1990, insert *Laws and Treaties*, text 6-01.

<sup>11</sup> See Law on Arbitration, No. 36 of December 5, 1988, BOE, December 7, 1988.

No time limits have been set for the successive phases of the procedure, except the overall time limit of six months for the making of the award (Article 20), neither are there particular times at which any relevant evidence has to be produced (Article 14); the only thing that is laid down is that, once arbitration proceedings have started,

...failure to attend or inaction on the part of any of the parties shall not stay the progress of the procedure or the issue of the award, neither shall the said award be deprived of effectiveness thereby (Article 12(2)).

There are two means of putting an end to arbitration: either by agreement or compromise between the parties, which is provided for in Article 15 of the Royal Decree, in which case the parties set down the fact in a written document and submit it to the Chairman of the Commission so that he may make an award proposal. Alternatively the arbitration award is made on completion of the proceedings, having to be issued within the maximum period of six months following the date of the agreement recognizing the conflict.

The award or the final arbitral decision is binding and enforceable on the parties. It may also be attacked and enforced in accordance with the provisions of the Law on Arbitration.

#### *E. Chapter IV: Special Procedure*

As we intimated, arbitration can relate not only to an actual conflict, but also to a circumstantial issue, namely the setting of an amount in lieu of the general tariff which, if the users pay the prescribed amount subject to reservations or lodge it with a judicial officer, allows them to consider authorization granted under the provisions of Article 142(2) of the Law on Intellectual Property. With a view to remedying the situation, Article 143(b) of the same Law subjects the setting of the amount to arbitration, and provides that the arbitration may be requested by an association of users or a broadcasting organization, which means that, in that case, simply the wish of the users is sufficient for proceedings to start, even where the position taken is considered contrary to the interests of the administration entity.

So in this case the balance of relations between the parties is upset in favor of one of them, thus altering the traditional image of arbitration as a means of settling conflicts at the request of the parties. One could for instance imagine a situation where the administration entity does not appear at the proceedings and only one of the parties is present, which would still not prevent the proceedings from going ahead (Article 25(2) of the Royal Decree).

By the filing of a request for the setting of an amount in lieu of general tariffs, which has to meet a number of requirements—both formal and substantive—laid down in Article 22, the representatives of the association of users or of the broadcasting organization are not relieved of their obligation to pay subject to reservations or lodge with a judicial officer the amount specified by the administration entity. Nevertheless, when under this procedure an arbitral award has been made setting an amount in lieu of the general tariff, the user party need only pay that amount to be able to secure authorization for the use of the works in the repertoire concerned, provided that both parties—the users and the administration entity—reach agreement.

This special procedure, with the exception of certain non-substantive special features, conforms in other respects to the general provisions of the Royal Decree that we are commenting on here: the final decision or award that ends it requires the attendance of all the arbitrators, is pronounced in equity and is set down with a statement of reasons, whereupon ordinary legal proceedings may be initiated for the hearing of the issue submitted to the Commission.

The date of the entry into force of Royal Decree No. 479, of May 5, 1989, Enacting Provisions on the Composition and Operating Procedures of the Arbitration Commission on Intellectual Property was set at July 1, 1989.

### III. Societies for the Management of Rights

We have already said elsewhere<sup>12</sup> that one of the aspects of the protection of intellectual property rights to which Spanish legislation has given particular attention is that of the regulation and operation of societies for the collective management of those rights. Generally speaking, the main requirements for the operation of those entities are either determinative, like the necessity that each such body obtain authorization from the Ministry of Culture to be able to operate as such in the management of intellectual property rights; or they may be written into the entities' statutes, like the absence of any gainful intent and other substantive requirements, and finally the need to adapt the operation of the entity, once the authorization has been obtained to certain conditions laid down in the main Law.

<sup>12</sup> Cf. "Letter from Spain," *Copyright*, 1988, p. 438 (heading XI: Provisions Governing Entities for the Administration of Rights).

There are two aspects of the emergence of these entities for the management of the rights recognized by the Spanish Law on Intellectual Property, which are claiming the statutory authorization to operate as such, that we consider highly interesting: on the one hand there is the classification of the types or legal character of the entities, and on the other the continued adherence to the principle of a degree of *de facto* monopoly of the work of managing rights in the various sectors.

The 1987 Law on Intellectual Property does not actually say anything specific about the actual nature of administration entities, or their type. It has deliberately omitted any reference to a particular form, confining itself to specifying certain circumstances or absolute requirements, without prejudice to the provisions of other texts that may be applicable to them (Article 136). In the face of the "silence" of the legislator and the "demand" for compliance with certain requirements, a number of sectors have already spoken their minds: cooperative societies and associations could seek authorization to operate as administration entities, whereas commercial firms would be excluded, owing to the requirement of an absence of gainful intent on the part of entities for the administration of rights.<sup>13</sup>

It is moreover significant to observe that, up to now, the administration entities that have been authorized to operate as such are representative of definite sectors of the rights "market." This might seem to indicate an unequivocal inclination to maintain a *de facto* monopoly in line with the other countries of the EEC, which does not mean that there would be a disregard for measures against such unlawful practice or abuse as might prevent, restrict or upset the normal balance of competition. With that in mind we must remember, among others, the Community decisions of June 2, 1971, and December 4, 1981, and the Court of Justice ruling of July 13, 1989 (joined cases, 110, 241 and 242, all in 1988), but also the recent Spanish Law on the Defense of Competition, No. 16 of July 17, 1989.

<sup>13</sup> See A. Delgado, "Las sociedades de gestión en el proyecto de ley de propiedad intelectual," in *Análisis e Investigaciones Culturales* (AIC), Ministry of Culture, No. 28, 1980, p. 44. "Consequently," this author maintains, "companies under civil law (Civil Code Article 1665) and under commercial law (Commercial Code Article 116) are excluded. As company concepts such as those existing in France and the Federal Republic of Germany, which incorporate economic interests in associative structures set up without any profit-sharing purpose, are absent from our legal order, cooperative societies and associations are the only two structures available for administration entities, and this will not fail to cause difficulties (especially as far as cooperative societies are concerned)." A similar sentiment was voiced by Francisco Capilla in his analysis of Article 132 of the Law on Intellectual Property, *op. cit.* (footnote 7), pp. 1779 *et seq.*

From the entry into force of the Law on Intellectual Property (December 1987) up to the middle of 1989, four administration entities have been authorized. Their characteristics and areas of concern are the following:

#### A. General Society of Authors of Spain (SGAE)

By order of the Ministry of Culture of June 1, 1988, this entity was granted preceptive authorization "to act as the managing body for the intellectual property rights of authors and their successors in title, under the conditions laid down in its statutes." The SGAE in fact had already exercised since 1941 the collective management in Spain of certain rights of exclusive character for the whole of the national territory. Now the 1987 Law on Intellectual Property, by expressly departing from the basic provisions of 1941 on which the legal monopoly of the SGAE was based, has obliged it on the one hand to adjust its activity to the new provisions and, on the other hand, to adapt its statutes to those provisions within a legal period of six months.

According to Article 4 of the SGAE statutes, its main purpose is

...the protection of the author and his successors in title in the exercise of their rights of economic character, by means of the management of the said rights in the manner specified in these statutes, and it may not devote itself to any activity outside the scope of the protection of intellectual property rights.

The rights managed by the Society are the rights of reproduction, distribution and communication to the public of literary works (both oral and written), musical compositions with or without words, dramatic or dramatico-musical, choreographic or mimed works and stage works in general, cinematographic works and any other audiovisual works, and translations, adaptations, arrangements, and transformations of any of the aforementioned works.

The SGAE also manages remuneration entitlements in connection with the public communication and export of audiovisual works, as provided in paragraphs (2) and (3) of Article 90 of the Law on Intellectual Property, and exercises the right to collect the compensatory remuneration provided for in Article 25 of the same Law in the case of sound or audiovisual reproductions made for personal use.

The SGAE is governed by a General Assembly, an Administrative Board of 36 members and a Delegate Commission.

#### B. Spanish Center for Reprographic Research (CEDRO)

At the same time as the draft of the new Spanish Law on Intellectual Property was being debated in

the *Cortes*, a campaign was going on in our country at the instigation of the Federation of Societies of Writers of Spain, its main purpose being to show the many types of harm caused by indiscriminate reprography, and propose the means of putting an end to—or at least lessening—illegal reprographic practices.<sup>14</sup>

The consequence of this campaign was the creation, around the middle of 1987, of a non-profit-making association which proposed not only the disclosure of the principles that ensure the protection of the moral and economic rights of those concerned in the publishing world, by means of collaboration with the authorities and both national and international organizations, but also announced its intention to promote the setting up of a management body for reproduction rights on the lines of what was provided for in the new Law on Intellectual Property.

This is how the Spanish Center for Reprographic Research (CEDRO) came into being; its statutes were amended by an agreement dated March 15, 1988, which enabled the association to be converted into an administration entity for the rights specified in the same statutes. Its application for preceptive authorization from the Ministry of Culture "to exercise the management of the intellectual property rights of authors, their successors in title and book publishers on the terms specified in its statutes" was granted by an order dated June 30, 1988.

CEDRO's management extends to the exclusive right of reproduction of any type of work published in book form by (a) photocopying or another comparable process, (b) storage in a data base, (c) retrieval from such a data base by means of physical fixation, (d) the making of copies of the data base for distribution to the public.

It will likewise manage the exclusive rights of distribution and communication to the public of the copies of works or originals of data bases in which such works may be incorporated. Finally, CEDRO will be responsible for the management of any right to remuneration that may derive from the use under a legal license or authorization of the works in question in any of the forms mentioned.

CEDRO is governed and administered by a General Assembly, a Management Board composed of 19 members and a Manager, the latter being responsible for the Center's administrative, financial and accounting organization.

### C. Association for the Management of Intellectual Rights (AGEDI)

There is a steadily-growing tendency for the emergence, in the field of the management of intellectual property rights, of entities representing specific interests that do not relate to authorship. As new ways and means of conducting the relations between the various protagonists in the "intellectual rights market" (authors, producers, performers, communication entities, etc.) emerge and establish themselves, new areas to be covered and new problems to be dealt with are also coming into view. In the same way as in the specific field of copyright, the guaranteed representation and protection of which is becoming more and more dependent on the existence of a sound and efficient body for the management of the rights involved, so is the safeguarding of the interests of other beneficiaries of intellectual rights, mainly performers and producers of phonograms or videograms.

The Association for the Management of Intellectual Rights (AGEDI) concerns itself with phonogram producers exclusively. It was set up at the end of 1987 and authorized by the Ministry of Culture to function as an administration entity by virtue of an order dated February 15, 1989. Its administration relates to

...the rights accruing to phonogram producers for the public use of their sound or audiovisual recordings...and also the compensatory remuneration provided for in Article 25 of the Law on Intellectual Property (royalty for private copying), for the purpose of which it may seek the services of another entity for the administration of intellectual rights.

AGEDI, membership of which is open to any natural person or legal entity of Spanish nationality having the status of phonogram producer, is governed by its General Assembly and by a Management Committee, the latter composed of a minimum of six and a maximum of eight members. The term of office of the members of the Management Committee will be one year, and they may be re-elected.

### D. Performers' Management Association of Spain (AIE)

This is the administration entity that received its authorization most recently, as it was granted by Order of the Ministry of Culture on June 29, 1989,

...to exercise the management of the intellectual property rights of performers and their successors in title on the terms laid down in its statutes.

The creation of this administration entity, which was achieved after difficult and protracted talks between the professional groups concerned, clearly reflects the initial desire to avoid the dissipation of effort that the emergence of several entities in this

<sup>14</sup> *El problema de la fotocopia de libros. Libro Blanco sobre la reprografía ilegal*, published by the Federation of Societies of Publishers of Spain, Madrid, 1986.

area would have caused. Not even the example of multiple entities elsewhere—such as ADAMI and SPEDIDAM in France—succeeded in overcoming an understandable suspicion of the potential risks of fragmented action. The AIE preferred to face the world as a compact block, conscious of the fact that, in principle, joint action on the part of all types of performers, both individuals and groups, was the most effective and most likely to further their interests.

Under Article 4 of its statutes, the AIE proposes to assume

...the management of the rights of performers and their successors in title in the exercise of such rights as may accrue to them through the secondary use of their performances incorporated in sound or audiovisual media or communicated in whatever form and by whatever method or procedure.

This management extends to the exclusive right of sound and audiovisual reproduction and the right of communication to the public. Of course it also includes the remuneration rights recognized by the Law on Intellectual Property in favor of performers, especially those provided for in Articles 25 (private copying) and 103 (secondary uses) of the same Law.

Who are the professionals whose activity is covered by the terms of reference of the Association? A quite specific activity is involved as, for the purposes of its application, the AIE regards as a performer

...the person who presents, recites, sings, interprets or performs in whatever form a musical composition with or without words, a dramatico-musical work or a variety act. The work concept shall include expressions of folklore and those that have fallen into the public domain.

In order to join the AIE, as either a full or an associate member, it is necessary, in addition to complying with certain formal requirements, to belong to one or both of the two main professional groups, who either interpret or execute works (*intérpretes o ejecutantes*).

The governing and administrative bodies of the entity are the General Assembly, the 25-member Administrative Board, the Permanent Commission and the Management.

These are the administration entities which, up to September 1989, have sought and obtained from the Spanish Ministry of Culture the appropriate authorization to operate as such. It should be pointed out that there are between those entities genuine cooperative bonds in the form of mutual recognition of comparable services rendered (grant of licenses, collection, distribution of royalties, etc.). All this is independent of their relations with foreign counterparts, in the form of unilateral or reciprocal representation contracts for the management of rights. This does not mean that no other entities for other types of rights or sectors will be

set up and authorized in the more or less distant future. The presence and action of the appropriate administration entity is an essential prerequisite, in Spanish legislation, for participation in specific activities on the "intellectual rights market," including remuneration for private copying. For the time being Spanish producers of audiovisual works have not yet formed an administration entity, which will be a cause of serious difficulties at the time of the collection and distribution of the appropriate compensatory royalty.

At the same time, an abundant and important group of exponents of three-dimensional art appear to be favorably disposed to the idea of setting up their own administration entity. That would be highly beneficial to that group of creators, mainly with regard to the monitoring of the exercise of the *droit de suite*, the novelty of which in Spanish legislation, compounded by the lack of an entity for the administration of the interests of this professional group, has until now been making the exercise and enjoyment of the *droit de suite* very difficult to bring about.

#### IV. Protection of Rights; Judicial Activity; Case Law

In our earlier "Letter," in which we commented on the new Spanish Law on Intellectual Property, we already pointed out that the legislature had completed its role by laying down standards for the protection of intellectual property rights under civil and criminal law. "It is now for the judges and courts," we said, "to test their efficacy as proceedings are brought before them."<sup>15</sup>

Indeed, now that the Law on Intellectual Property is about to complete its first two years of application, a study of all the activities that have taken place in connection with the legal protection of intellectual property rights has enabled us to note, on the one hand, the greater attention paid by the courts to the adoption of measures in favor of the aggrieved owner of rights contemplated in Article 123 of the Law on Intellectual Property (the grant of restraining injunctions and compensation and, where appropriate, the ordering of precautionary measures for immediate protection). On the other hand, it will be noticed that the rulings, at whatever jurisdictional level they have been handed down, reflect the off-putting effect that the new Law has had, in spite of the fact that, in the great majority of instances, the cases involved factual circumstances obtaining prior to the Law's entry into force.

<sup>15</sup> *Op. cit.* (footnote 12), p. 439.

The courts' attitude towards unlawful acts in relation to intellectual property has changed substantially compared with what it used to be. It is of course certain that this change had a decisive influence on the reform of Article 534 of the Criminal Code, by virtue of Organic Law No. 6, of November 11, 1987, which put an end to the absurd system based on the technique of a "blank" criminal law.<sup>16</sup> But it is nonetheless certain that the judiciary's determination to apply the protection provisions has served to enhance the efficacy of the procedure. The use by a number of courts of the precautionary measures provided for in the new Law on Intellectual Property has set an example that has had a very wide-ranging effect; in particular areas of intellectual property infringement, such as phonographic and audiovisual piracy, that effect has been highly beneficial: the figures on this subject provided by the professional sectors concerned, namely FAP (the Anti-Piracy Federation) and AFYVE (the Spanish Phonographic and Videographic Association) are eloquent to the point of suggesting the possibility of eradicating this economic disease totally in the immediate future.<sup>17</sup>

With regard to the findings of the appeal courts or the rulings of the Supreme Court, these seem still to be suffering from a lack of concreteness due to the lack of sufficient time for court decisions in this area that involve circumstances obtaining since the 1987 Law on Intellectual Property has been in force. It is still early for rulings to be reported that could serve as examples or models of one jurisprudential trend or another based on the provisions of the new Law and in the light of the fundamental principles enshrined in it.

This being said, it comes as no surprise that, in the preambles to the decisions of various courts and tribunals, there should be references to the permanency of certain principles in the copyright field, whatever the set of provisions applicable to the matter at issue, those that preceded the present Law on Intellectual Property or those of the new Law itself. In the case of the protection of moral rights, ever since the famous Supreme Court ruling in the case of sculptor Pablo Serrano (Supreme Court ruling of December 9, 1985), both legal writers and case law have been chanting *mea culpas* on account of the strange interpretation that was

placed at that time on Article 534 of the Criminal Code in support of the non-recognition of the author's moral rights.<sup>18</sup>

In what direction and according to what principles will intellectual property case law evolve in our country? This is difficult to predict. With a view to guiding the work of the public prosecutors of the territorial and provincial jurisdictions in their judgments on infringements of intellectual property rights, the Attorney General of the State sent them a circular (No. 2, of April 20, 1989), in which details were given on a number of aspects of typical formulation and civil liability in connection with intellectual property offenses.<sup>19</sup>

The Attorney General's Office not only specified, for the better demarcation of the subject, the features that characterize typical offenses of this kind, the manner in which they are committed, the owners of rights, object and content of the offense, etc., but also drew attention to the need to maintain a consistency of interpretation based on the contents of those same instructions. The underlying reason, in the judgment of the Attorney General, was that it would be very difficult, after the entry into force of Organic Law No. 7, of December 28, 1988 (which set up criminal jurisdictions and amended the Organic Laws on the Judiciary and on Criminal Jurisdiction), for

...the jurisprudence of the Supreme Court to concern itself with intellectual property offenses as formulated at present, as, considering the degree of seriousness of the offense, the procedure to be followed would be "shorter for particular offenses" (Article 779 of the Law on Criminal Jurisdiction), in which case the case is heard and ruled upon by the criminal judge (Article 14(3) of the Law on Criminal Jurisdiction) without there being any possibility of a cassation appeal against the ruling handed down, the only provision being for an appeal to the provincial tribunal (Articles 795(1) and 796(1) of the Law on Criminal Jurisdiction).

Should the predictions of the Attorney General's Office prove correct, there will be no further doubt that we are on the threshold of a period during which the judicial dimension of intellectual property will achieve great prominence. We are not going to make either triumphant promises or gloomy predictions: all we can do is wait.

(WIPO translation)

<sup>16</sup> Whatever the degree of success achieved by the 1987 criminal law reform, the need for it was undeniable. The reform was made in relation to "a legislative situation so deplorable that the prospect of improvement was assured at the outset" (J.M. Gómez Benítez and G. Quintero, *Protección penal de los derechos de autor y derechos conexos*, Madrid, Cívitas, 1989, p. 20).

<sup>17</sup> Cf. in this connection the Supreme Court ruling of October 13, 1988 (Room 2).

<sup>18</sup> Both the FAP and the AFYVE periodically publish information bulletins on the spectacular achievements in the campaign against phonographic and audiovisual piracy, in which the action of the courts and the judicial police play a decisive part. It is important to point out that, since the promulgation of the Law on Intellectual Property, aspects of intellectual property have been included in the information course on "economic offenses" at the judicial police school.

<sup>19</sup> Office of the Attorney General of the State: "Precisiones sobre algunos aspectos de la formulación típica y la responsabilidad civil en los delitos contra la propiedad intelectual tras la Ley Orgánica 6/1987, de 11 de noviembre," Circular No. 2/1989 to Chief Attorneys of the territorial and provincial tribunals.

## Activities of Other Organizations

### International Literary and Artistic Association (ALAI)

#### Executive Committee

(Paris, February 2 and 3, 1990)

The Executive Committee of the International Literary and Artistic Association (ALAI) met in Paris on February 2 and 3, 1990, under the chairmanship of Professor Georges Koumantos (Greece), President of ALAI. WIPO was represented by Mr. Mihály Ficsor, Director, Copyright Law Division. The Committee took note of reports on past and planned activities of ALAI and discussed various questions related to those subjects, particularly the preparation of the next ALAI Study Days to be held in Helsinki from May 28 to 30, 1990, and the next Congress of ALAI to be held on board a boat in the Aegean Sea from April 22 to 29, 1991.

Furthermore, the Committee discussed, *inter alia*, the copyright status of works created by computers (which was on the agenda of the ALAI Congress in Quebec City in September 1989, but about which the adoption of a resolution was postponed) and adopted the following resolution:

The Executive Committee of ALAI, following the Congress of the Association held in Quebec City from September 25 to 30, 1989, has adopted the following resolution concerning works created by computers:

*Noting* on the one hand that the development of computer technology permits the creation of both computer-assisted works and computer-generated works, and on the other hand that, while in the first case there is still a link between the author and his creation, that link becomes tenuous in the second case,

*Considering* the necessity, in the field of new technology as in that of conventional creation, of maintaining the fundamental principles of the protection of authors' rights, and in particular the requirement of originality as a condition of protection,

*Believes* that it is premature, with respect to works created by computers, to draw a clear dividing line between those works whose creation has merely been facilitated by the computer and those that the computer has actually created, as even in the latter case there is human intervention which, if creative, must be protected;

*Nevertheless considers* that, if creative contributions are made using, either as such or in an altered form, elements borrowed from existing software or data banks, their legal status should be determined by recourse to the traditional concepts of joint authorship and derived works.

## Calendar of Meetings

### WIPO Meetings

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

1990

- May 28 to June 1 (Geneva)** **Committee of Experts on the International Protection of Geographical Indications**  
 The Committee will examine a document prepared by the International Bureau of WIPO on the need for a new multilateral treaty on the international protection of geographical indications and its possible content.  
*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 a working document prepared by the International Bureau of WIPO, study problems of particular relevance to developing countries in connection with the preparation of a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).  
*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 supplementing the Paris Convention as far as patents are concerned (patent law treaty).  
*Invitations:* States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.
- June 19 to 22 (Geneva)** **Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as Far as Patents Are Concerned**  
 The Meeting will prepare the organization of the diplomatic conference which will be convened to negotiate and adopt a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).  
*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 a draft trademark law treaty.  
*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 Settlement of Intellectual Property Disputes Between States (Second Session)**  
The Committee will examine principles for a possible multilateral treaty.  
*Invitations:* States members of the Paris Union, the Berne Union or WIPO or party to the Nairobi Treaty 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.
- November 26 to 30 (Geneva)** **Working Group on the Application of the Madrid Protocol of 1989 (Second Session)**  
The working group will continue to study Regulations for the implementation of the Madrid Protocol of 1989.  
*Invitations:* States members of the Madrid Union, States having signed or acceded to the Protocol, 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 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**  
(dates and place to be confirmed)
- Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as Far as Patents Are Concerned**
- This diplomatic conference will negotiate and adopt a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).  
*Invitations:* To be decided by the preparatory meeting to be held from June 19 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**  
(dates and place to be confirmed)
- Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property (Fifth Session)**
- The Diplomatic Conference is to 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.

## UPOV Meetings

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

### 1990

- June 25 to 29 (Geneva)**
- Second Preparatory Meeting for the Revision of the UPOV Convention**
- Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.
- October 15 and 16 (Geneva)**
- Third Preparatory Meeting for the Revision of the UPOV Convention**
- Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.
- October 17 (Geneva)**
- Consultative Committee (Forty-Second Session)**
- The Committee will prepare the twenty-fourth ordinary session of the Council.  
*Invitations:* Member States of UPOV.
- October 18 and 19 (Geneva)**
- Council (Twenty-Fourth Ordinary Session)**
- 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 for the Revision of the UPOV Convention.  
*Invitations:* Member States of UPOV and, as observers, certain non-member States and intergovernmental and non-governmental organizations.

### 1991

- March 4 to 19**  
(dates and place to be confirmed)
- Diplomatic Conference for the Revision of the UPOV Convention**
- Invitations:* Member States of UPOV and, without the right to vote, States members of the United Nations not members of UPOV as well as, as observers, certain organizations.

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

### Non-Governmental Organizations

#### 1990

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 (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
September 27 and 28 (Brussels)	International Federation of Reprographic Rights Organisations (IFRRO): Annual General Meeting
October 7 to 13 (Budapest)	International Confederation of Societies of Authors and Composers (CISAC): Congress

#### 1991

April 22 to 29 (Aegean Sea)	International Literary and Artistic Association (ALAI): Congress
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